CHAPTER 15

Investigations and Inquiries

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D. Authority in Cases of Contempt

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Investigations and Inquiries

A. BASIS OF AUTHORITY TO INVESTIGATE; CREATING COMMITTEES

§ 1. In General; Subjects of Authorizing Resolutions

Although the congressional power of investigation is not explicitly granted by the Constitution, it has been exercised by the House since 1792.(1) It is well established that the power to investigate is implied from the power to legislate granted in article I, section 1 of the Constitution. Thus, the Supreme Court has stated that the power of inquiry, with process to enforce it, is an essential and appropriate auxiliary to the legislative function.(2) The Court has further stated:

> The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste.(3)

The scope of the power of inquiry is as broad as the power to enact and appropriate under the Constitution.(4) Subjects of inves-

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1. The House in that year rejected a resolution requesting the President to investigate the defeat of General St. Clair's army and instead asserted its own right to investigate by requesting the President to cause proper executive officers to deliver to the House documents pertinent to the matter. See 3 Hinds' Precedents § 1725.

For earlier coverage of the subject matter of this chapter generally, see, for example, 3 Hinds' Precedents §§ 1666–1724 (punishment of witnesses for contempt); §§ 1725–1826 (powers of investigation and conduct of investigations); §§ 1856–1910 (inquiries of the executive); 6 Cannon's Precedents §§ 335–353 (punishment of witnesses for contempt); §§ 354–393 (power of investigation and conduct of investigations); and §§ 404–437 (inquiries of the executive).

See also Leading Cases on Congressional Investigatory Power (Committee Print, Joint Committee on Congressional Operations, 94th Cong. 2d Sess.).

2. *McGrain* v *Daugherty,* 273 U.S. 135, 174.

3. *Watkins* v *United States,* 354 U.S. 178, 187 (1957).

4. *Barenblatt* v *United States,* 360 U.S. 109, 111 (1959). See also The Con-

tigation that have specifically been approved by the courts include the existence of subversive activities in education,[5] labor and industry,[6] the extent of corruption in labor unions,[7] and the denial of civil rights by particular organizations.[8]

Although the power of investigation is broad, it is not unlimited. It may be exercised only "in aid of the legislative function."[9] Accordingly, it has been stated that, generally, there is no congressional power "to expose for the sake of exposure,"[10] and that, in any event, Congress cannot inquire into matters which are within the exclusive province of one of the other branches of government,[11] or which are reserved

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stitution of the United States of America, Analysis and Interpretation, S. Doc. No. 92–82, 92d Cong. 2d Sess., p. 80 (1972).

5. *Barenblatt* v *United States,* 360 U.S. 109 (1959); *Deutch* v *United States,* 367 U.S. 456 (1961).

6. *Watkins* v *United States,* 354 U.S. 178 (1957); *Flaxer* v *United States,* 358 U.S. 147 (1958); *Wilkinson* v *United States,* 365 U.S. 399 (1961).

7. *Hutcheson* v *United States,* 369 U.S. 599 (1962). See also The Constitution of the United States of America, Analysis and Interpretation, S. Doc. No. 92–82, 92d Cong. 2d Sess., pp. 84, 85 (1972).

8. *Shelton* v *United States,* 404 F2d 1292 (D.C. Cir. 1968), cert. denied, 393 U.S. 1024 (1969).

9. *Kilbourn* v *Thompson,* 103 U.S. 168 (1881). Beginning with *In re Chapman,* 166 U.S. 661 (1897) and *McGrain* v *Daugherty,* 273 U.S. 135 (1927) and until prior to *United States* v *Rumely,* 345 U.S. 543 (1952), courts presumed existence of a legislative purpose. After that period, as investigations began to arouse criticism for infringing individual liberties, however, courts began to construe narrowly the resolutions describing authority of committees (see *Rumely*) and went so far as to impose a specific burden on the government in contempt prosecutions to show affirmatively the source of authority for each investigation. See *United States* v *Lamont,* 236 F2d 312 (2d Cir. 1956) and Moreland, Allen B., Congressional Investigations and Private Persons, 40 So. Cal. L. Rev. 189, 230–236 (1967) for a discussion of legislative purpose. See also §6, infra, for discussion of a closely related topic, the pertinence of the inquiry.

10. *Watkins* v *United States,* 354 U.S. 178, 200 (1957). In making this statement, however, Chief Justice Warren pointed out that this view did not apply to Congress' function to inquire into and publicize corruption, maladministration or inefficiency in agencies of government. *Id.,* 211 n. 33.

11. *Barenblatt* v *United States,* 360 U.S. 109, 111, 112 (1959). See also §3, infra, for a discussion of executive branch refusals to provide information.

to the states.[12] In imposing such limitations upon the power to investigate, the courts have, as in other areas, traditionally refused to inquire into the motives of legislators.[13]

A further requirement for the validity of an investigation is that it must have been expressly or impliedly authorized in accordance with congressional procedures. As an example, the House, may authorize a select or standing committee to investigate a particular subject, or a committee may authorize a subcommittee to investigate a subject.[14] In the usual practice, resolutions authorizing the Speaker to appoint Members to select or special committees to investigate designated subjects are assigned to and reported by the Committee on Rules,[15] which calls them up as privileged.[16] In addition, congressional investigations may be initiated pursuant to statute,[17] motion to recommit,[18] joint[19] or

12. See *United States* v *DiCarlo,* 102 F Supp 597 (N.D. Ohio 1952) for rejection of an allegation that the Senate encroached state powers by creating a special committee to investigate organized crime in interstate commerce.

13. *Tenney* v *Brandhove,* 341 U.S. 367 (1951) and *United States* v *O'Brien,* 391 U.S. 367 (1968).

14. See § 1.1, infra, for the full text of an authorizing resolution and *House Rules and Manual* § 976 (1973), for the form of an authorizing resolution. Mr. Justice Frankfurter characterized such a resolution, one to investigate lobbying activities (see § 1.5, infra, for a discussion of this resolution), as the committee's "controlling charter" which delimits its "right to exact testimony." *United States* v *Rumely,* 345 U.S. 41, 44 (1953).

Parliamentarian's Note: Recent changes in procedures relating to authorization of standing committees will be discussed in supplements to this edition as they appear.

15. *House Rules and Manual* § 717 (1973).

16. See Rule XI clauses 22, 23, and 24, *House Rules and Manual* §§ 726, 729, and 732 in the edition published at the commencement of 1973; at the end of the 93d Congress first session these clauses were numbered 23, 24, and 25, respectively.

17. See, for example, 26 USC §§ 8001, 8022, which establish the Joint Committee on Internal Revenue Taxation, and confer investigatory duties, respectively.

18. See, for example, 112 CONG. REC. 1762, 1763, 89th Cong. 2d Sess., Feb. 2, 1966, for a motion to recommit a resolution directing the Speaker to certify to a U.S. Attorney a contempt citation against Robert M. Shelton allegedly of the Ku Klux Klan, to a select committee of seven members appointed by the Speaker to examine the sufficiency of these citations in light of relevant judicial decisions.

19. See, for example, 114 CONG. REC. 21012–31, 90th Cong. 2d Sess., July 12, 1968, for House approval of H.J.

concurrent resolution,[20] or rule of the House.[1]

The determination of whether a particular investigation is within the scope of the congressional power, or whether procedural requirements of the investigation have been met, may be important when such questions as the alleged contempt of witnesses arise. Thus, courts have held that persons may not be convicted of contumacy arising out of an investigation which the House lacked authority to conduct. Subjects that have, in this context, been held not to be proper matters for legislative action have included the withdrawal of congressional consent to establish a bi-state compact, the port of New York authority.[2] Similarly, courts have refused to convict a witness for contumacy arising out of a subcommittee investigation of Communist activities in the field of labor, where such investigation had not been approved by a majority of the parent Committee on UnAmerican Activities as was required by the committee rule.[3] In another instance, the authorizing resolution was construed not to sanction the investigation of ac-

Res. 1, establishing a joint committee to investigate crime. The final action in the Senate was referral to the Committee on the Judiciary.

20. See, for example, 91 CONG. REC. 346–350, 79th Cong. 1st Sess., Jan. 18, 1945, for House approval of H. Con. Res. 18, establishing the Joint Committee on the Organization of the Congress. This measure was amended by the Senate at 91 CONG. REC. 1010, 79th Cong. 1st Sess., Feb. 12, 1945; the House concurred in the Senate amendments at 91 CONG. REC. 1272–74, 79th Cong. 1st Sess., Feb. 19, 1945.

1. See Rule XI clauses 2(b), 11(b), and 19 (c), *House Rules and Manual* §§ 679, 703A, and 720 (1973), authorizing the Committees on Appropriations, Internal Security, and Standards of Official Conduct, respectively, to conduct investigations and studies.

Note: Recent changes in Rule XI and in the procedure for authorizing investigations by rule will be discussed in supplements to this edition as they appear. Meanwhile, see Rules X and XI, *House Rules and Manual* (1975 and 1977) for discussion of changes in investigating, oversight, and subpena authorities of standing committees since the 93d Congress.

2. See *Tobin* v *United States*, 306 F2d 270 (D.C. cir. 1962); cert. denied, 371 U.S. 902 (1962) which held that the express reservation of Congress' right "to alter, amend or repeal" its initial consent granted in 1921 could not be implied from art. I, § 10 clause 3 of the Constitution which provides that no state shall without the consent of Congress enter into any agreement or compact with another state.

3. *Gojack* v *United States*, 384 U.S. 702 (1966).

tivities of a lobbyist that were related to his efforts to influence public opinion by the distribution of literature, and that were unrelated to any representations made by him to Congress.[4]

Discussed in ensuing sections are particular subjects on which Congress may legislate and appropriate and which are therefore proper matters for investigation;[5] inquiries directed to the executive branch;[6] procedures for investigative hearings;[7] and things incidental to the authority to investigate, such as the power to punish witnesses for contempt.[8]

Principles affecting the investigation of certain specific subjects have been treated in other chapters. These subjects include impeachment;[9] election contests;[10] conduct of Members;[11] and qualification and disqualification of Members.[12] In addition, the broad subject of committee structure and procedures is treated elsewhere.[13]

4. *United States* v *Rumely*, 345 U.S. 543 (1952). See § 1.5, infra, for the resolution establishing a select committee to investigate lobbying activities.

5. See § § 1.1–1.46, infra.

6. See § § 2–5, infra.

7. See § § 6–16, infra.

8. See § § 17–22, infra.

9. See Ch. 14, supra.

10. See Ch. 9, supra.

11. See Ch. 12, supra.

12. See Ch. 7, supra.

13. See Ch. 17. infra.

Collateral References

Barth, Alan, *Government by Investigation*, Viking Press, New York (1955).

The Constitution of the United States of America, Analysis and Interpretation, S. Doc. No. 92–82, 92d Cong. 2d Sess., pp. 79–81, 83–86 (1972).

De Grazia, Alfred, ed., Congress: *The First Branch of Government*, American Enterprise Institute for Public Policy Research, Washington, D.C. (1966).

Dimock, Marshall Edward, *Congressional Investigating Committees*, AMS Press, New York, 1971 (reprint of a 1928 work).

Frantz, Laurent, *Wilkinson, Braden, and Deutch: The Legislative Investigation Case*, 21 Law in Transition (continuation of National Lawyer's Guild Rev.) 219 (1962).

Landis, Constitutional Limitations on the Congressional Power of Investigation, 40 Harv. L. Rev. 153 (1926).

Levi, Edward H., et al., Congressional Investigations, A Symposium, 18 U. of Chic. L. Rev. 421 (1951).

McGreary, M. Nelson, *The Development of Congressional Investigative Power*, Octagon Books, Inc. (1966).

McKay, R. B., Congressional Investigations and the Supreme Court, 51 Cal. L. Rev. 276 (1963).

Moreland, Allen B., Congressional Investigations and Private Persons, 40 So. Cal. L. Rev. 189 (1967).

Newman, Frank C., Supreme Court, Congressional Investigations and Influence

Peddling, N. Y. U. L. Rev. 796 June (1958).
Senate Committee on the Judiciary, Congressional Power of Investigation, S. Doc. No. 99, 82d Cong. 2d Sess. (1954).
Shapiro, M., Judicial Review: Political Reality and Legislative Purpose: The Supreme Court's Supervision of Congressional Investigations, 15 Vand. L. Rev. 535 (1962).
Taylor, Telford, *Grand Inquest: The Story of Congressional Investigations*, Simon and Schuster, New York (1955).
Warren, W. C., Congressional Investigations: Some Observations, 21 Food, Drug, Cosm. L. Jour. 40 (1966)

Privacy, Human Values, and Democratic Institutions

§ 1.1 Form of resolution establishing select committee. The House rejected a resolution establishing a select committee to investigate privacy, human values, and democratic institutions.

On Feb. 8, 1972,(14) the House rejected a resolution (called up as privileged by direction of the Committee on Rules) establishing a select committee. The proceedings were as follows:

MR. [RAY J.] MADDEN [of Indiana]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 164 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 164

Whereas the development of technology is advancing at an unparalleled rate of speed and is rapidly coming to affect every level of American life; and

Whereas the operations of industry and Government are coming more and more to rely on highly sophisticated computer technology to assist them in their operations; and

Whereas the full significance and the effects of technology on society and on the operations of industry and Government are largely unknown; and

Whereas computers and other technological innovations aid in the gathering and centralization of massive information of all kinds of individuals and, consequently, call into question the effect of technology on the right of privacy; and

Whereas Congress needs a committee ready and able to evaluate the effects of technology on the operations of Government, on the democratic institutions and processes basic to the United States, and on the basic human and civil rights of our citizens: Now, therefore, be it

Resolved, That there is hereby created a select committee to be known as the Select Committee on Privacy, Human Values, and Democratic Institutions to be composed of nine Members of the House of Representatives to be appointed by the Speaker, one of whom he shall designate as chairman. Any vacancy occurring in the membership of the committee shall be filled in the same manner in which the original appointment was made.

The committee is authorized and directed to conduct a full and com-

14. 118 CONG. REC. 3181–3200, 92d Cong. 2d Sess. The resolution was reported on May 19, 1971 (H. Rept. No. 218).

plete investigation and study of the development and proliferation of technology in American society, including the role and effectiveness of computer technology in the operations of industry and Government, the consequences of using computers to solve social questions which traditionally have been addressed without the assistance of computers and other machines, and the effects of technology and machines on democratic institutions and processes. The committee shall also study the use of computers and other technical instruments in gathering and centralizing information on individuals and the effect of such activity on the human and civil rights.

For the purpose of carrying out this resolution the committee, or any subcommittee thereof authorized by the committee to hold hearings, is authorized to sit and act during the present Congress at such times and places and within the United States, including any Commonwealth or possession thereof, whether the House is in session, has recessed, or has adjourned, to hold such hearings, and to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents, as it deems necessary; except that neither the committee nor any subcommittee thereof may sit while the House is meeting unless special leave to sit shall have been obtained from the House. Subpoenas may be issued under the signature of the chairman of the committee or any member of the committee designated by him, and may be served by any person designated by such chairman or member.

The committee shall report to the House as soon as practicable during the present Congress the results of its investigation and study, together with such recommendations as it deems advisable. Any such report which is made when the House is not in session shall be filed with the Clerk of the House.

With the following committee amendment:

On page 3, line 5: Strike the words "act during the" and insert "act, subject to clause 31 of Rule XI of the Rules of the House of Representatives, during the".

The committee amendment was agreed to. . . .

MR. MADDEN: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

THE SPEAKER:[15] The question is on the resolution.

MR. [FLETCHER] THOMPSON of Georgia: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered. . . .

The question was taken; and there were—yeas 168, nays 216, not voting 47 . . . .

So the resolution was rejected.

Congressional Operations and Practices

§ 1.2 The House established a select committee to investigate House Rules X and XI, which relate to the structure, jurisdiction, and procedure of committees.

On Jan. 31, 1973,[16] the House by a vote of yeas 282 to nays 91

15. Carl Albert (Okla.).

16. 119 CONG. REC. 2812–16, 93d Cong. 1st Sess. The resolution was re-

agreed to House Resolution 132, reported from the Committee on Rules, creating a select committee to study the operation and implementation of Rules X and XI, focusing on committee structure, number and optimum size of committees, their jurisdiction, number of subcommittees, committee rules and procedures, media coverage of meetings, staffing, space, equipment, and other committee facilities.

Parliamentarian's Note: Consideration of House Resolution 132 was provided for by the adoption of House Resolution 176 [119 CONG. REC. 2804, 93d Cong. 1st Sess.], called up by direction of the Committee on Rules. Since House Resolution 132 would not have been privileged (because it contained provisions affecting contingent funds), House Resolution 176 provided for the immediate consideration of House Resolution 132, debate to be controlled by the Committee on Rules and the previous question considered as ordered.

§ 1.3 The House agreed to a resolution creating a special committee to investigate and report on campaign expenditures and practices by candidates for the House.

ported on Jan. 30, 1973 (H. Rept. No. 2).

On Aug. 4, 1970,[17] the House by voice vote approved House Resolution 1062, authorizing the Speaker to appoint a special committee to investigate and report to the House on candidate expenditures and donations of services and funds received as well as violations of election laws. The resolution was called up by Mr. Thomas P. O'Neill, Jr., of Massachusetts, who referred to it as authorizing the biennial special committee to investigate campaign expenditure."[18]

17. 116 CONG. REC. 27125, 27126, 91st Cong. 2d Sess. The resolution was reported on June 11, 1970 (H. Rept. No. 1187) from the Committee on Rules.

18. See also 112 CONG. REC. 19079–81, 89th Cong. 2d Sess., Aug. 11, 1966; and 90 CONG. REC. 6392, 6393–98, 78th Cong. 2d Sess., June 21, 1944, for other examples of voice vote approvals of H. Res. 929 and 551, respectively, creating special committees to investigate campaign expenditures.

Parliamentarian's Note: Since the 93d Congress, the special committee has not been reconstituted. On Aug. 21, 1974, the House agreed to H. Res. 737, a privileged resolution reported from the Committee on Rules, authorizing the Committee on House Administration to conduct investigations within its jurisdiction (including elections of Members) and authorizing that committee to issue subpenas. 120 CONG. REC. 29653, 29654, 93d Cong. 2d Sess.

§ 1.4 The House established a select committee to study and investigate the welfare and education of congressional pages.

On Sept. 30, 1964,[19] the House by voice vote approved House Resolution 847 (called up as privileged by direction of the Committee on Rules), to create a select committee to investigate the welfare and education of congressional pages including dining, recreational, educational, and physical training facilities and opportunities as well as rates of pay, hours of work, and other working conditions.

§ 1.5 The House established a select committee to investigate lobbying activities.

On Aug. 12, 1949,[20], the House by voice vote approved House Resolution 298 (called up as privileged by direction of the Committee on Rules), creating a select committee of seven members to investigate all lobbying activities and all activities of federal agencies intended to influence, encourage, promote, or retard legislation.

Structure and Operation of the Executive Branch

§ 1.6 The House established a select committee to study executive agencies.

On Apr. 29, 1936,[1] the House by a roll call vote of yeas 269 to nays 44 approved House Resolution 460 (called up as privileged by direction of the Committee on Rules), authorizing the Speaker to appoint a select committee of five members to study activities of executive departments, bureaus, boards, commissions, and agencies to determine whether any of these agencies should be abolished or coordinated with other agencies in the interest of simplification, efficiency, and economy.

This resolution, called up by Mr. John J. O'Connor, of New York, had been requested by President Franklin D. Roosevelt, in a Mar. 20, 1936, letter to Speaker Joseph W. Byrns, of Tennessee, seeking cooperation of the House in incorporating agencies created during the depression into the regular executive organization.[2]

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19. 110 CONG. REC. 23187, 23188, 88th Cong. 2d Sess. The resolution was reported on Sept. 16, 1964 (H. Rept. No. 1887).

20. 95 CONG. REC. 11385–89, 81st Cong. 1st Sess. The resolution was reported on Aug. 3, 1949 (H. Rept. No. 1185).

1. 80 CONG. REC. 6375, 6376, 6385, 6386, 74th Cong. 2d Sess. The resolution was reported on Apr. 28, 1936 (H. Rept. No. 2504).

2. See 80 CONG. REC. 6376, 74th Cong. 2d Sess., for the text of this letter.

§ 1.7 The House established a special committee to investigate acts of executive agencies.

On Feb. 11, 1943,[3] the House by a roll call vote of yeas 294 to nays 50, approved House Resolution 102 (called up as privileged by direction of the Committee on Rules), establishing a special committee of five members to investigate any action, rule, procedure, regulation, order, or directive taken or promulgated by any department or independent agency of the federal government where complaint is made that any action or rule (1) is beyond the scope of the department or agency, (2) invades constitutional rights, privileges, or immunities of citizens, or (3) inflicts penalties for noncompliance without an opportunity to present a defense.[4]

§ 1.8 The House rejected a resolution establishing a select committee to investigate the transfer of certain government agencies and bureaus from the District of Columbia.

On July 15, 1941,[5] the House by a vote of yeas 72 to nays 204, rejected House Resolution 257 (called up as privileged by direction of the Committee on Rules), creating a select committee of five members to investigate the feasibility and desirability of transferring any government agencies and bureaus to locations outside the District of Columbia and to investigate the location, extent, and cost of office space and other facilities rented by the various federal departments, bureaus, and agencies within and without the District of Columbia.

Specific Agencies

§ 1.9 The House approved a resolution establishing a select committee to investigate the organization, personnel, and activities of the Federal Communications Commission.

On Jan. 19, 1943,[6] the House by voice vote approved House Res-

3. 89 CONG REC. 872, 883, 884, 78th Cong. 1st Sess. The resolution was reported on Feb. 8, 1943 (H. Rept. No. 104).

4. Authority to continue this subcommittee was granted by a roll call vote of yeas 254 to nays 55 on H. Res. 88, on Jan. 18, 1945. 91 CONG. REC. 344–346, 79th Cong. 1st Sess.

5. 87 CONG. REC. 6073, 6082, 6083, 77th Cong. 1st Sess. The resolution was reported on July 10, 1941 (H. Rept. No. 932).

6. 89 CONG. REC. 233, 235, 78th Cong. 1st Sess. The resolution was reported on Jan. 18, 1943 (H. Rept. No. 8).

olution 21 (called up as privileged by direction of the Committee on Rules), establishing a select committee of five members to determine whether the Federal Communications Commission acted in accordance with law and the public interest in its organization, selection of personnel, and conduct of its activities.

§ 1.10 The House established a select committee to investigate activities of the Farm Security Administration.

On Mar. 18, 1943,[7] the House by voice vote approved House Resolution 119 (called up as privileged by direction of the Committee on Rules), creating a select committee to investigate activities of the Farm Security Administration to determine whether congressional policies were being followed.[8]

§ 1.11 The House established a select committee to investigate the financial position of the White County Bridge Commission.

On May 25, 1955,[9] the House by a roll call vote of yeas 205 to nays 166, approved House Resolution 244 (called up as privileged by direction of the Committee on Rules), creating a select committee of three members to investigate and study the White County Bridge Commission, established by Public Law 37 of the 77th Congress, to ascertain whether that bridge, located near New Harmony, Ind., should be toll free, and to study receipts and expenditures of the commission since it was established in 1941.

§ 1.12 The House approved a resolution establishing a select committee to investigate the National Labor Relations Board.

On July 20, 1939,[10] the House on a roll call vote of 254 yeas to 134 nays approved House Resolution 258 (called up as privileged by direction of the Committee on Rules), establishing a select committee of five members to investigate the fairness of the National Labor Relations Board in its dealings with labor organizations and employers; the effect of the National Labor Relations Act on disputes between employers and em-

7. 89 CONG. REC. 2194, 78th Cong. 1st Sess. The resolution was reported on Mar. 11, 1945 (H. Rept. No. 241).

8. See 89 CONG. REC. 1859, 78th Cong. 1st Sess., for text of the resolution.

9. 101 CONG. REC. 7036, 7043, 7044, 84th Cong. 1st Sess. The resolution was reported on May 24, 1955 (H. Rept. No. 614).

10. 84 CONG. REC. 9582, 9592, 9593, 76th Cong. 1st Sess. The resolution was reported on July 18, 1939 (H. Rept. No. 1215).

ployees, on employment, and on general economic conditions; the desirability of amendments to the National Labor Relations Act; whether the Board has attempted to write into the National Labor Relations Act intents and purposes not justified by the act; and the need for legislation further to define and clarify the meaning of the term "interstate commerce" and the relationship between employers and employees.

Economics

§ 1.13 The House rejected a resolution creating a special committee to study prices paid for the necessities of life.

On June 27, 1941,[11] the House by a roll call vote of yeas 100 to nays 200, rejected House Resolution 212 (called up as privileged by direction of the Committee on Rules), to establish a select committee of five members to study prices paid for the necessities of life, and various problems facing purchasers of goods in the markets of the country.

§ 1.14 The House established a special committee known as the Committee on Post-War Economic Policy and Planning.

On Jan. 26, 1944,[12] the House by voice vote approved House Resolution 408 (called up as privileged by direction of the Committee on Rules), creating a special committee of 18 members to investigate all matters relating to post-war economic policy and programs; to gather and study information, plans, and suggestions; and to report to the House periodically.

§ 1.15 The House established a select committee to investigate supplies and shortages of food, particularly meat.

On Mar. 27, 1945,[13] the House on a roll call vote of 292 yeas to 7 nays approved House Resolution 195 (called up as privileged by direction of the Committee on Rules), creating a select committee to investigate shortages of food, particularly civilian meat supplies; factors relating to production and distribution of essential foodstuffs, particularly meat;

11. 87 CONG. REC. 5624, 5634, 77th Cong. 1st Sess. The resolution was reported on June 24, 1941 (H. Rept. No. 848).

12. 90 CONG. REC. 753, 762, 763, 78th Cong. 2d Sess. The resolution was reported on Jan. 25, 1944 (H. Rept. No. 1021).

13. 91 CONG. REC. 2862, 2863, 79th Cong. 1st Sess. The resolution was reported on Mar. 21, 1945 (H. Rept. No. 356).

the presence of black markets in all kinds of meat; and the diversion of meat from normal, legitimate commercial channels of trade.(14)

§ 1.16 The House established a select committee to investigate newsprint supplies.

On Feb. 26, 1947,(15) the House by a roll call vote of yeas 269 to nays 100, approved House Resolution 58 (called up as privileged by direction of the Committee on Rules), creating a select committee to study and investigate the need for adequate American supplies of newsprint, printing and wrapping paper, paper products, paper pulp and pulpwood; possible means of increasing these supplies by domestic production or import; and the assistance that could be rendered by American agencies or officers to increase supplies.

§ 1.17 The House established a select committee to investigate transactions on commodity exchanges.

On Dec. 18, 1947,(16) the House by voice vote approved House Resolution 403 (called up as privileged by direction of the Committee on Rules), creating a select committee to investigate purchases and sales of commodities, including any activities of federal departments and agencies which have affected or may affect food prices as well as private acts and official activities of federal authorities in connection with the purchase or sale of other commodities.

§ 1.18 The House established a select committee to investigate the disposition of surplus property.

On May 9, 1946,(17) the House by voice vote approved House Resolution 385 (called up as privileged by direction of the Committee on Rules),(18) creating a se-

14. See 91 CONG. REC. 2784, 79th Cong. 1st Sess., Mar. 26, 1945, for text of this resolution.

15. 93 CONG. REC. 1457, 1458, 1465, 80th Cong. 1st Sess. The resolution was reported on Feb. 18, 1947 (H. Rept. No. 41).

16. 93 CONG. REC. 11640, 11648, 80th Cong. 1st Sess. The resolution was reported on Dec. 17, 1947 (H. Rept. No. 1221).

17. 92 CONG. REC. 4750, 79th Cong. 2d Sess. The resolution was reported on Apr. 9, 1946 (H. Rept. No. 1889).

18. See 92 CONG. REC. 4568, 79th Cong. 2d Sess., May 7, 1946, for the text of this resolution, and for discussion of the division of time for debate. In this instance, the Chairman of the Committee on Rules obtained unanimous consent to provide an additional hour for debate. Since the chairman was opposed to the resolution and had made the request in the absence of the Member in charge of the resolution, some discussion en-

lect committee to study and investigate contracts entered into between the United States and purchasers and lessees of surplus real and personal property; methods by which such contracts were awarded and opportunities to bid on the contracts; the effects of this program of disposition; the disposition of surplus outside the United States; the advisability of governmental operation of facilities and the effect of governmental competition with private business in such operations; the adequacy or inadequacy of present statutes; and other matters deemed appropriate by the committee.

Small Business

§ 1.19 The House established a select committee to investigate and study war-time problems of small business.

On Jan. 18, 1945,[19] the House by voice vote approved House Resolution 64 (called up as privileged by direction of the Committee on Rules), creating a select committee of nine members to investigate and study the problems of small business arising because of World War II, with particular reference to (1) whether the potentialities of small business were being adequately developed and utilized and, if not, what factors hindered development; (2) whether adequate consideration was being given to small business needs; (3) whether small business was being treated fairly; and (4) the need for a sound program for the solution of post-war problems of small business.[20]

§ 1.20 The House established a select committee to investigate problems of small business.

On Feb. 5, 1969,[1] the House by voice vote approved House Resolution 66 (called up as privileged by direction of the Committee on Rules), creating a select committee of 15 members to investigate problems affecting small business, including impediments to normal operations, growth, and development; administration of federal laws; and adequacy of gov-

sued as to the effect of the request in the circumstances.

19. 91 CONG. REC. 337, 341, 79th Cong. 1st Sess. The resolution was reported on Jan. 16, 1945 (H. Rept. No. 21).

20. The nine-member Select Committee on Small Business with the same jurisdiction was created on Jan. 22, 1943, by voice vote approval of H. Res. 18. 89 CONG. REC. 309, 310, 317, 78th Cong. 1st Sess.

1. 115 CONG. REC. 2778, 91st Cong. 1st Sess. The resolution was reported on Jan. 23, 1969 (H. Rept. No. 7).

ernment service to the needs of small business.[2]

Parliamentarian's Note: After adopting the rules for the 92d Congress on Jan. 22, 1971,[3] establishing the permanent Select Committee on Small Business (Rule X clause 3) the House by voice vote approved House Resolution 19 (called up as privileged by direction of the Committee on Rules), which dealt with the size of the committee, conferred subpena power, and authorized domestic travel.[4] Beginning in the 94th Congress, the Committee on Small Business became a standing committee of the House (see Rule X clause 1(s), *House Rules and Manual,* 1975).

Taxation

§ 1.21 The House established a special committee to investigate tax-exempt foundations.

On July 27, 1953,[5] the House by a roll call vote of yeas 209 to nays 163, approved House Resolution 217 (called up as privileged by direction of the Committee on Rules), creating a special committee to investigate and study tax-exempt educational and philanthropic foundations to determine whether their funds were being used for the purposes for which they were established, or for un-American and subversive activities, propaganda, attempts to influence legislation, or other political purposes.

§ 1.22 The House substituted the Committee on Ways and Means for a select committee to investigate duplication and overlapping of taxes.

On Sept. 27, 1951,[6] the House, after voice vote adoption of a Committee on Rules amendment substituting the Committee on Ways and Means for a select com-

2. See also, for example, 113 CONG. REC. 2148–50, 90th Cong. 1st Sess., Feb. 1, 1967, in which the House by voice vote approved H. Res. 53, establishing a select committee to investigate problems of small business and providing the same jurisdiction as would H. Res. 66, of the 91st Congress. Authority for a select committee on small business had been granted biennially since 1941 (H. Res. 294, 77th Congress).

3. 117 CONG. REC. 143, 144, 92d Cong. 1st Sess. See 117 CONG. REC. 14, 92d Cong. 1st Sess., Jan. 21, 1971, for the text of H. Res. 5, relating to adoption of the rules.

4. See 117 CONG. REC. 4593–95, 92d Cong. 1st Sess., Mar. 2, 1971, for the text of and vote on H. Res. 19.

5. 99 CONG. REC. 10015, 10030, 83d Cong. 1st Sess. The resolution was reported on July 13, 1953 (H. Rept. No. 773).

6. 97 CONG. REC. 12263, 12265, 82d Cong. 1st Sess. H. Res. 414 was reported from the Committee on Rules on Sept. 26, 1951 (H. Rept. No. 1056), and subsequently called up as privileged.

mittee of five members to investigate means and methods of eliminating overlapping between and duplication of sources of federal, state, and local taxes, approved House Resolution 414 authorizing such investigation by voice vote.

Domestic Military Activities

§ 1.23 The House established the select committee to investigate the seizure of property of Montgomery Ward & Co.

On May 5, 1944,[7] the House by a roll call vote of yeas 300 to nays 60, approved House Resolution 521 (called up as privileged by direction of the Committee on Rules), creating a select committee of seven members to investigate the seizure by the Army of property of Montgomery Ward & Co., on Apr. 26, 1944, pursuant to Executive Order No. 9438.[8]

Military Preparedness

§ 1.24 The House established a select committee known as the Committee on Post-War Military Policy.

On Mar. 28, 1944,[9] the House by voice vote created a select committee of 23 members to investigate all matters relating to post-war military requirements of the United States, to gather and study information, plans, and suggestions, and to report findings and conclusions to the House.

§ 1.25 After defeating the motion for the previous question, the House laid on the table a resolution reported by the Committee on Rules to create a special committee to investigate national defense.

On Mar. 11, 1941,[10] after defeating the motion for the previous question, the House by voice vote laid on the table House Resolution 120 (called up as privileged by direction of the Committee on Rules), creating a select committee to investigate all federal activities relating to the national

7. 90 CONG. REC. 4047, 4069, 4070, 78th Cong. 2d Sess. The resolution was reported on May 2, 1944 (H. Rept. No. 1410).

8. See *Public Papers and Addresses of Franklin D. Roosevelt*, 1944, 1945, Harper and Brothers Publishers (N.Y.), note p. 453, for a discussion of this and other executive orders to seize property of Montgomery Ward & Co.

9. 90 CONG. REC. 3199, 3207, 78th Cong. 2d Sess. See H. Res. 465 (called up as privileged by the Committee on Rules. The resolution was reported on Mar. 24, 1944 (H. Rept. No. 1286).

10. 87 CONG. REC. 2182, 2189, 2190, 77th Cong. 1st Sess. The resolution was reported on Mar. 10, 1941 (H. Rept. No. 222).

defense and to prepare, compile, and analyze data pertinent thereto to enable Congress to determine the need for appropriations or further legislation facilitating or abolishing any such activities.

Foreign Military Operations and Foreign Affairs

§ 1.26 The House agreed to a resolution establishing a select committee to travel to Southeast Asia, investigate all aspects of American military involvement there, and report back to the House within 45 days.

On June 8, 1970,(11) the House by a vote of 224 yeas to 101 nays approved House Resolution 976 (called up as privileged by direction of the Committee on Rules), directing the Speaker to appoint a select committee of 12 members, including two from the Committee on Armed Services, two from the Committee on Foreign Affairs, and eight from the House at large, to travel to Southeast Asia to investigate all aspects of American military involvement and report to the House within 45 days.

§ 1.27 The House established a select committee to investigate the Katyn Forest massacre.

On Sept. 18, 1951,(12) the House by voice vote approved House Resolution 390 (called up as privileged by direction of the Committee on Rules), creating a select committee of seven members to study and investigate the facts, evidence, and extenuating circumstances relating to the massacre of thousands of Polish officers buried in a mass grave in the Katyn Forest on the banks of the Dnieper, near Smolensk, when it was a Nazi-occupied territory formerly controlled by the Union of Soviet Socialist Republics.

§ 1.28 The House established a select committee to investigate the seizure of Lithuania, Latvia, and Estonia by the Union of Soviet Socialist Republics.

On July 27, 1953,(13) the House by voice vote approved House Resolution 346 (called up as privileged by direction of the Committee on Rules), creating a select committee to study and inves-

11. 116 CONG. REC. 18656–71, 91st Cong. 2d Sess. The resolution was reported on June 4, 1970 (H. Rept. No. 1160).

12. 97 CONG. REC. 11545, 11554, 82d Cong. 1st Sess. The resolution was reported on Aug. 16, 1951 (H. Rept. No. 885).

13. 99 CONG. REC. 10031, 10037, 83d Cong. 1st Sess. The resolution was reported on July 23, 1953 (H. Rept No. 903).

tigate the seizure and forced incorporation of Lithuania, Latvia, and Estonia by the Union of Soviet Socialist Republics and the treatment of the people in such areas during and following the seizure and incorporation.

Veterans' Benefits

§ 1.29 The House established a select committee to investigate alleged abuses in the education and training program for World War II veterans.

On Aug. 28, 1950,(14) the House by voice vote approved House Resolution 474 (called up as privileged by direction of the Committee on Rules), creating a select committee of nine members to investigate and study alleged abuses in the education and training program for World War II veterans, and action taken or not taken by the Veterans' Administration and state authorities to prevent abuses under the Servicemen's Readjustment Act, as amended.

§ 1.30 The House established a select committee to investigate education, training, and loan guaranty programs for veterans.

On Feb. 2, 1951,(15) the House by voice vote approved House Resolution 93 (called up as privileged by direction of the Committee on Rules), creating a select committee of nine members to investigate, study, and evaluate alleged abuses in education, training, and loan guaranty programs for World War II veterans, and the action taken or not taken by the Veterans' Administration and state agencies to prevent abuses arising under the national service life insurance program (38 USC § 701).

§ 1.31 The House established a select committee to investigate and study the benefits under federal law for the survivors of deceased members of the armed forces.

On Feb. 2, 1955,(16) the House by voice vote approved House Resolution 35 (called up as privileged by direction of the Committee on Rules), creating a select committee of five members to investigate federal benefits for sur-

14. 96 CONG. REC. 13629, 13632, 81st Cong. 2d Sess. The resolution was reported on Aug. 16, 1950 (H. Rept. No. 2927).

15. 97 CONG. REC. 876, 82d Cong. 1st Sess. The resolution was reported on Jan. 29, 1951 (H. Rept. No. 19).

16. 101 CONG. REC. 1079–81, 84th Cong. 1st Sess. The resolution was reported on Jan. 31, 1955 (H. Rept. No. 13).

vivors of members and former members of the armed forces.

Un-American Activities

§ 1.32 The House established a special committee to investigate un-American propaganda activities.

On May 26, 1938,[17] the House by voice vote approved House Resolution 282 (called up as privileged by direction of the Committee on Rules), authorizing the Speaker to appoint a special committee of seven members to investigate un-American propaganda activities in the United States, domestic diffusion of such propaganda, and all other questions relating thereto.[18]

17. 83 CONG. REC. 7568, 7586, 75th Cong. 3d Sess. The resolution was reported on May 10, 1938 (H. Rept. No. 2319).

18. Authority for the select committee to investigate un-American propaganda with the same jurisdiction as the above resolution was continued, by subsequent privileged resolutions reported from the Committee on Rules, as follows: by roll call vote of 302 yeas to 94 nays, on H. Res. 65 on Feb. 10, 1943 (89 CONG. REC. 795, 809, 810, 78th Cong. 1st Sess.); 331 yeas to 46 nays, on H. Res. 420 on Mar. 11, 1942 (88 CONG. REC. 2282, 2297, 77th Cong. 2d Sess.); 354 yeas to 6 nays, on H. Res. 90 on Feb. 11, 1941 (87 CONG. REC. 886–899, 77th Cong. 1st Sess.); 344 yeas to 21 nays, on H. Res. 321 on Jan. 23, 1940 (86 CONG. REC. 572, 604, 605, 76th Cong. 3d Sess.); and 344 yeas to 35 nays, on H. Res. 26 on Feb. 3, 1939 (84 CONG. REC. 1098, 1127, 1128, 76th Cong. 1st Sess.). An amendment to the rules, contained in H. Res. 5, established the standing Committee on Un-American Activities on Jan. 3, 1945 (91 CONG. REC. 10–15, 79th Cong. 1st Sess.). The Committee on Internal Security, established on Feb. 18, 1969 (115 CONG. REC. 3723, 3746, 91st Cong. 1st Sess.) by approval on a vote of 306 yeas to 80 nays, of H. Res. 89, reported as privileged from the Committee on Rules, assumed the jurisdiction of the Committee on Un-American Activities. Commencing with the 94th Congress, the Committee on Internal Security was abolished and its jurisdiction, files and staff transferred to the Committee on the Judiciary (see Rule X clause 1(m), *House Rules and Manual*, 1975).

§ 1.33 The House tabled a resolution to create a special committee to investigate un-American activities.

On Apr. 8, 1937,[19] the House on a division vote of yeas 184 to nays 38, laid on the table House Resolution 88 (called up as privileged by direction of the Committee on Rules), creating a special committee of seven members

19. 81 CONG. REC. 3283, 3290, 75th Cong. 1st Sess. The resolution was reported on Apr. 1, 1937 (H. Rept. No. 534).

to investigate organizations or groups of individuals operating within the United States which diffuse slanderous or libelous un-American propaganda of a religious, racial, or subversive nature tending to incite to the use of force and violence; and to investigate the extent and use of United States mail and postal services for the diffusion of these materials.

Parliamentarian's Note: The House had previously created the Special Committee to Investigate Communist Activities, chaired by Hamilton Fish, Jr., of New York, and the Special Committee on Un-American Activities, chaired by John W. McCormack, of Massachusetts, in 1930 and 1934, respectively. Authority for each of these special committees had expired at the time House Resolution 88 was introduced.[20]

Scientific Activities

§ 1.34 The House established the Select Committee on Astronautics and Space Exploration.

On Mar. 5, 1958,[1] the House by voice vote approved House Resolution 496, which had been submitted by Majority Leader John W. McCormack, of Massachusetts, by unanimous consent. The resolution was for purposes of creating the Select Committee on Astronautics and Space Exploration of 13 members to investigate all aspects of and problems relating to the exploration of outer space and the control, development, and use of astronautical resources, personnel, and facilities.

On July 21, 1958,[2] the standing Committee on Science and Astronautics was established by voice vote approval of House Resolution 580 (called up as privileged by direction of the Committee on Rules), amending Rule X clause 1 by adding subclause (q).[3]

§ 1.35 The House established a select committee to investigate research programs.

On Sept. 11, 1963,[4] the House by a roll call vote of 336 yeas to 0

20. See the remarks of Mr. Lindsay C. Warren (N.C.), at 81 CONG. REC. 3287, 76th Cong. 1st Sess., Apr. 8, 1937.

1. 104 CONG. REC. 3443, 85th Cong. 2d Sess.

2. 104 CONG. REC. 14513, 14514, 85th Cong. 2d Sess.

3. The resolution was reported on May 29, 1958 (H. Rept. No. 1837). See § 1.44, infra, for a discussion of Senate establishment of the Special Committee on Astronautical and Space Exploration and a successor standing committee, the Committee on Astronautical and Space Sciences.

4. 109 CONG. REC. 16744, 16753, 16754, 88th Cong. 1st Sess. The res-

nays approved House Resolution 504 (called up as privileged by direction of the Committee on Rules), creating a select committee of nine members to investigate expenditures for research programs, government departments and agencies which conduct research and amounts expended thereby, and facilities for coordinating research programs, including grants to colleges and universities.

Chemicals in Food Production

§ 1.36 The House established a select committee to investigate the use of chemicals in the production of food products.

On June 20, 1950,[5] the House by voice vote approved House Resolution 323 (called up as privileged by direction of the Committee on Rules), creating a select committee of seven members to investigate and study the use of chemicals, pesticides, and insecticides in the production of food products and fertilizers and their effects on the health and welfare of the nation, stability of the agricultural economy, soil, health of animals, and vegetation.

Airplane Crashes

§ 1.37 The House established a select committee to investigate crashes of commercial airplanes in 1940 and 1941.

On Mar. 6, 1941,[6] the House by voice vote approved House Resolution 125 (called up as privileged by direction of the Committee on Rules), creating a select committee of five members to investigate air crashes and other accidents in the United States in 1940 and 1941 occurring on commercial airlines; to ascertain pertinent facts relating to the construction of flying and ground equipment and the management and operation of airlines; to examine laws and regulations relating to operation and inspection of airplanes and safety equipment, and the liability of airlines for loss of life or injury to persons or property; and to investigate other matters as deemed necessary by the committee.

Migration of Destitute Citizens

§ 1.38 The House established a select committee to inves-

olution was reported on Aug. 28, 1963 (H. Rept. No. 718).

5. 96 CONG. REC. 8933–36, 81st Cong. 2d Sess. The resolution was reported on June 12, 1950 (H. Rept. No. 2214).

6. 87 CONG. REC. 1930, 1931, 1940, 77th Cong. 1st Sess. The resolution was reported on Mar. 4, 1941 (H. Rept. No. 183).

tigate the interstate migration of destitute citizens.

On Apr. 22, 1940,[7] the House by voice vote approved House Resolution 63 (called up as privileged by direction of the Committee on Rules), creating a select committee of five members to investigate the social and economic needs and interstate migration of destitute persons.[8]

Pensions

§ 1.39 The House established a select committee to investigate old-age pension plans.

On Mar. 10, 1936,[9] the House by voice vote approved House Resolution 443, authorizing the Speaker to appoint eight members to a select committee to inquire into old-age pension plans with respect to which legislation had been submitted to the House, particularly the plan embodied in a House bill (H.R. 7154), providing for retirement annuities; and to examine the conduct, history, and records of persons or groups promoting such plans. The resolution was, by unanimous consent, submitted by Mr. C. Jasper Bell, of Missouri, and was intended as a modification and clarification of House Resolution 418, which had previously been reported from the Committee on Rules (H. Rept. No. 2005), and adopted.

Offensive Literature

§ 1.40 The House established a select committee to investigate current literature.

On May 12, 1952,[10] the House by voice vote approved House Resolution 596 (called up as privileged by direction of the Committee on Rules), creating a select committee of nine members to investigate and study the extent to which current literature, books, and magazines containing im-

7. 86 CONG. REC. 4880, 4884, 76th Cong. 3d Sess. The resolution was reported on Apr. 19, 1940 (H. Rept. No. 1998).

8. Authority for this select committee was continued by voice vote approval of H. Res. 113, on Mar. 31, 1941. 87 CONG. REC. 2730, 2736, 77th Cong. 1st Sess. The resolution which was privileged, was reported on Mar. 31 from the Committee on Rules (H. Rept. No. 350). It was called up that same day, by direction of the Committee on Rules, by Mr. Lawrence Lewis [Colo.], who asked unanimous consent for its consideration.

9. 80 CONG. REC. 3506, 3507, 74th Cong. 2d Sess. See *Id.* at p. 2360 (Feb. 19, 1936), for adoption of the related resolution H. Res. 418.

10. 98 CONG. REC. 5061, 5062, 5069, 82d Cong. 2d Sess. The resolution was reported on Apr. 30, 1952 (H. Rept. No. 1837).

moral, obscene, or otherwise offensive matter, or placing an improper emphasis on crime, violence, and corruption, were being made available to Americans through the mail and otherwise, and to determine the adequacy of existing law to prevent the publication and distribution of this literature.

Crime

§ 1.41 The House established a select committee to study crime in the United States.

On May 1, 1969,(11) the House by a roll call vote of yeas 345 to nays 18, approved House Resolution 17, reported as privileged from the Committee on Rules, establishing a select committee of seven members to investigate all aspects of crime in the United States including causes and effects; preparation of statistics; exchange of information among federal, state, local, and foreign law enforcement agencies; treatment and rehabilitation of offenders; and prevention and control.(12)

Energy

§ 1.42 The House rejected a resolution establishing a select committee to investigate energy resources.

On May 26, 1971,(13) the House by a roll call vote of yeas 128 and nays 218, rejected House Resolution 155 (called up as privileged by direction of the Committee on Rules), creating a select committee of seven members to investigate availability and ownership of oil, gas, coal, and nuclear energy reserves; reasons and possible solutions for delay in new starts of fossil fueled power plants; effects of pricing practices; effects of import of low sulfur fuels; measures to increase transportation of fuel materials and close the gap between supply and demand of electric energy; and the environmental effects of the electricity industry

Sit-down Strikes

§ 1.43 The House laid on the table a resolution to create a special committee to investigate sit-down strikes.

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11. 115 CONG. REC. 11087, 11100, 11101, 91st Cong. 1st Sess. The resolution was reported on Apr. 22, 1969 (H. Rept. No. 150).

12. The House by voice vote approved H. Res. 115, which authorized an investigation of the same issues on Mar. 9, 1971. 117 CONG. REC. 5587, 5588, 5610, 92d Cong. 1st Sess.

13. 117 CONG. REC. 16984, 17002, 17003, 92d Cong. 1st Sess. The resolution was reported on May 19, 1971 (H. Rept. No. 217).

On Apr. 8, 1937,[14] the House by voice vote agreed to a motion to table House Resolution 162 (called up as privileged by direction of the Committee on Rules), to authorize the Speaker to appoint a special committee to investigate the causes and management of sit-down strikes and state and local efforts to prevent them, as well as persons instigating such strikes.

Senate Precedents

§ 1.44 The Senate established the Special Committee on Astronautical and Space Exploration.

On Feb. 6, 1958,[15] the Senate on a roll call vote of 78 yeas to 1 nay approved Senate Resolution 256, establishing a special committee of 13 Senators to investigate all aspects and problems relating to the exploration of outer space and control, development, and use of astronautical resources, personnel, equipment, and facilities.[16]

§ 1.45 The Senate established a special committee to investigate contracts under the national defense program.

On Mar. 1, 1941,[17] the Senate by voice vote approved Senate Resolution 71, establishing a special committee of seven Senators to investigate the operation of the program for procurement and construction of supplies, materials, munitions, vehicles, aircraft, vessels, plants, camps, and other articles and facilities in connection with the national defense. Areas of inquiry included (1) types and terms of contracts awarded on behalf of the United States; (2) methods by which contracts are awarded and contractors selected; (3) utilization of small business facilities; (4) geographic distribution of contracts and location of plants and facilities; (5) effect of the program with respect to labor and migration of labor; (6) perform-

14. 81 CONG. REC. 3291, 3301, 75th Cong. 1st Sess. The resolution was reported on Apr. 2, 1937 (H. Rept. No. 555)

15. 104 CONG. REC. 1804, 1806, 85th Cong. 2d Sess.

16. The Senate established the standing Committee on Astronautical and Space Sciences which assumed the functions of the select committee on July 24, 1958. See 104 CONG. REC. 14857, 14858, 85th Cong. 2d Sess., for voice vote approval of S. Res. 327. See also § 1.34, supra, for House establishment of the Select Committee on Astronautics and Space Exploration and the successor standing committee, the Committee on Science and Astronautics.

17. 87 CONG. REC. 1615, 77th Cong. 1st Sess.

ance of contracts and accountings required of contractors; (7) benefits accruing to contractors with respect to amortization for taxation and other purposes; and (8) practices of management or labor, and prices, fees, and charges which interfere with the defense program or unduly increase its cost.

§ 1.46 The Senate established the Select Committee on Presidential Campaign Activities to investigate the extent, if any, of illegal, improper, or unethical activities engaged in by persons involved in the Presidential election of 1972.

On Feb. 7, 1973,[18] the Senate by a roll call vote of 77 yeas to 0 nays approved Senate Resolution 60, establishing the Select Committee on Presidential Campaign Activities to investigate the extent, if any, of involvement in illegal, improper, or unethical conduct by persons in the Presidential campaign of 1972. Areas of inquiry included (1) breaking, entering, and bugging of headquarters or offices of the Democratic National Committee in the Watergate Building; (2) electronic surveillance of the Democratic National Committee; (3) surreptitious removal of documents; (4) preparation, transmission, or receipt of reports on the aforementioned activities; (5) whether any person alone or with others planned the aforementioned activities; (6) whether participants in the aforementioned activities were induced by bribery, coercion, or threats to plead guilty or conceal or fail to reveal such activities; (7) efforts to disrupt, hinder, impede, or sabotage campaign activities; (8) whether any person alone or with others induced activities mentioned in (7) above or paid participants; (9) fabrication, dissemination, or publication of false charges or information to discredit Presidential aspirants; (10) planning of activities mentioned in (7), (8), or (9); (11) financial transactions and storage; (12) compliance or noncompliance with congressional acts which require reporting of receipt or disbursement of money; (13) whether secret funds were kept; (14) whether documents or other physical evidence were concealed, suppressed, or destroyed; and (15) any other activities having a tendency to prove or disprove that persons acting alone or with others engaged in illegal, improper, or unethical activities in connection with the Presidential election of 1972.

18. 119 CONG. REC. 3849–51, 93d Cong. 1st Sess.

B. INQUIRIES AND THE EXECUTIVE BRANCH

§ 2. Resolutions of Inquiry and Responses

Resolutions of inquiry are usually simple resolutions used to obtain information from the executive branch. Such resolutions, if addressed to the President or head of an executive department, are given privileged status in the House, provided they seek information of a factual nature, rather than request opinions or require an investigation on the subject.(19)

The effectiveness of such a resolution derives from comity between the branches of government rather than from any elements of compulsion.(20)

Certain conventions have arisen with regard to the wording of resolutions of inquiry. Thus, the House traditionally "requests" the President and "directs" the heads of executive departments to furnish information.(21) Moreover, such resolutions often include the qualifying phrase, "if not incompatible with the public interest," particularly where the request is for information relating to foreign affairs.(1)

The ensuing precedents are illustrative of resolutions of inquiry directed to the President,(2) Secretary of State,(3) Secretary of Defense,(4) Attorney General,(5) Acting Attorney General,(6) Secretary of Commerce,(7) Secretary of the Interior,(8) Secretary of Health, Education, and Welfare,(9) and Postmaster General.(10) The emphasis in these precedents is upon the nature of the information requested in each case, and the response if any to the resolution of inquiry.(11) Actual floor procedures

19. See *House Rules and Manual* §§ 856 and 857 (1973).

20. See § 4, infra, for a discussion of legal proceedings initiated by a Senate select committee to enforce a subpena issued to the President. Other methods to obtain information include committee or subcommittee oral or written requests for documents or testimony from the President or cabinet officers.

21. 3 Hinds' Precedents §§ 1856, 1895; and Rule XXII clause 5, *House Rules and Manual* § 856 (1973).

1. See 3 Hinds' Precedents § 1899, "directing" the President, and §§ 2.1, 2.2, and 2.7, infra, "directing" the President and other officers, and §§ 2.15, and 2.21–2.23, infra, "requesting" certain department heads.

2. See §§ 2.1, 2.2, 2.7, and 2.16, infra.

3. See §§ 2.1–2.5, 2.9–2.11, 2.13–2.1.5, 2.21, and 2.26, infra.

4. See §§ 2.1, 2.6–2.8, 2.12, and 2.15 infra.

5. See §§ 2.18 and 2.19, infra.

6. See § 2.17, infra.

7. See §§ 2.20, 2.22, infra.

8. See § 2.23, infra.

9. See § 2.24, infra.

10. See § 2.25, infra.

11. See 2 Hinds' Precedents § 1596, 3 Hinds' Precedents §§ 1856–1910, and

relating to the use of resolutions of inquiry, and prerequisites for privileged status, are treated in detail elsewhere.[12] Generally, formal responses to resolutions of inquiry are laid before the House, referred to the committee having jurisdiction, and ordered printed but more informal responses to resolutions of inquiry are sometimes forwarded directly to the interested committee or Members, even where the resolution itself has been tabled or not otherwise disposed of. (See, *e.g.* § 2.11, infra.)

Foreign Affairs—American Military Involvement in South Vietnam

§ 2.1 A resolution of inquiry directing the President, Secretary of State, Secretary of Defense, and Director of the Central Intelligence Agency to furnish information relating to the history and rationale for American involvement in South Vietnam, nature and capacity of the South Vietnamese government, and plans for elections in the Republic of South Vietnam was held not privileged in response to a point of order.

On July 7, 1971,[13] Speaker Carl Albert, of Oklahoma, sustained a point of order against a resolution of inquiry, House Resolution 491, directing the President, Secretary of State, Secretary of Defense, and Director of the Central Intelligence Agency to furnish, within 15 days after adoption of the resolution, full and complete information on the following: (1) the history and rationale of American involvement in South Vietnam since completion of the study "United States-Vietnam Relationships, 1945–1967," (the Pentagon Papers) prepared by the Vietnam Task Force, Office of the Secretary of Defense; (2) the known existing plans for a residual force of American armed forces in South Vietnam; (3) the nature and capacity of the South Vietnamese government, including but not limited to their past and present military capabilities; the capacity for self-sufficiency including but not limited to the political base of the Republic, the scope if any, of governmental malfunction and corruption; the depth of popular support and procedures for dealing with nonsupport including

6 Cannon's Precedents §§ 404–437, for earlier precedents.

12. See Ch. 24, infra.

13. 117 CONG. REC. 23810, 23811, 92d Cong. 1st Sess.

but not limited to known existing studies of the economy and internal workings of the government of the Republic of South Vietnam; and (4) American and South Vietnamese plans and procedures for Nov. 1971 elections in the Republic of South Vietnam, including but not limited to United States covert or non-covert involvement in those elections.

The Speaker sustained the point of order raised by F. Edward Hebert, of Louisiana, Chairman of the Committee on Armed Services, on the ground that the resolution sought opinions rather than facts. The ruling was made when Ms. Bella S. Abzug, of New York, moved to discharge the Committee on Armed Services from further consideration of the resolution under Rule XXII clause 5.

Parliamentarian's Note: Although the issue was not raised in this instance, the reference to the Director of Central Intelligence would have destroyed the privilege if a point of order had been raised on that ground. 6 Cannon's Precedents § 406 indicates that the term "heads of executive departments" in Rule XXII clause 5,(14) refers exclusively to members of the President's cabinet and only resolutions of inquiry addressed to these heads of executive departments are privileged. (The resolution at issue in § 406 to which Cannon referred was addressed to the Federal Reserve Board.) See also 3 Hinds' Precedents §§ 1861–1863, and 5 Hinds' Precedents § 7283, for other relevant precedents.

§ 2.2 The House laid on the table resolutions of inquiry directing the President and Secretary of State to furnish the report entitled "United States-Vietnam Relationships, 1945–1967," also known as the Pentagon Papers.

On June 30, 1971,(15) the House, by a roll call vote of yeas 272 to nays 113, tabled a privileged resolution of inquiry reported adversely by the Committee on Armed Services, House Resolution 489, directing the President to furnish the House, within 15 days after adoption of the resolution, the full and complete text of the study entitled "United States-Vietnam Relationships, 1945–1967," also known as the Pentagon Papers, prepared by the Vietnam Task Force, Office of the Secretary of Defense.

On the same date,(16) the House by voice vote tabled an identical

14. *House Rules and Manual* §§ 855, 856 (1973).

15. 117 CONG. REC. 23030, 23031, 92d Cong. 1st Sess.

16. *Id.* at p. 23031.

resolution, House Resolution 490, and on July 7, 1971,[17] by voice vote tabled House Resolution 494, directing the Secretary of State to furnish this study.

South Vietnamese Presidential Election

§ 2.3 The House laid on the table a privileged resolution of inquiry directing the Secretary of State to furnish communications between the Department of State, the United States Embassy in Saigon, and certain Vietnamese presidential candidates which might relate to the Vietnamese presidential elections.

On Sept. 30, 1971,[18] the House by voice vote tabled a privileged resolution of inquiry reported adversely by the Committee on Foreign Affairs, House Resolution 595, directing the Secretary of State to furnish to the House, within one week after adoption of the resolution, the complete text of all communications, as described above, taking place since Jan. 1, 1971, pertaining to the 1971 Vietnamese presidential election.

Following this action the House by unanimous consent tabled House Resolution 619, which was identical to House Resolution 595 and had also been adversely reported by the Committee on Foreign Affairs.

§ 2.4 The House laid on the table two privileged resolutions of inquiry directing the Secretary of State to furnish information relating to an election in South Vietnam.

On Oct. 20, 1971,[19] the House laid on the table two identically worded resolutions of inquiry, House Resolution 632 and House Resolution 638, directing the Secretary of State to furnish to the Committee on Foreign Affairs,[20] not later than 15 days after adoption of the resolution, materials relating to the Oct. 3, 1971, Vietnamese election, including: (1) all documents and other pertinent information relating to public opinion surveys financed by the United States in Vietnam; (2) all documents and other information relating to use by South Vietnamese authorities of radio and television facilities financed by the United States; (3) all press re-

17. *Id.* at p. 23808.

18. 117 CONG. REC. 34266, 92d Cong. 1st Sess.

19. 117 CONG. REC. 37055, 37057, 92d Cong. 1st Sess.

20. See § 2.26, infra, for a discussion of this precedent as it relates to requesting a head of an executive department to respond directly to a committee rather than to the House.

leases by American officials in Saigon; (4) all communications between American and South Vietnamese officials; and (5) all representations made to the participants in that election by American officials concerning the desire that the election be free and contested.

These resolutions, reported adversely by the Committee on Foreign Affairs, were laid on the table by voice votes.

Phoenix Program

§ 2.5 The House laid on the table a privileged resolution of inquiry directing the Secretary of State to furnish the House certain information regarding the Phoenix Program.

On July 7, 1971,[1] the House by voice vote tabled a privileged resolution reported adversely from the Committee on Foreign Affairs, House Resolution 493, directing the Secretary of State, to the extent not incompatible with the public interest, to furnish the House, not later than 15 days following adoption of the resolution, all documents in the English language with respect to (1) the Phoenix Program, a counterintelligence operation conducted in South Vietnam, and (2) the extent of U.S. involvement in that program.

Bombardment of North Vietnam

§ 2.6 The House laid on the table a resolution of inquiry directing the Secretary of Defense to furnish information relating to American air and naval bombardment of North Vietnam.

On Aug. 16, 1972,[2] the House by voice vote tabled a privileged resolution of inquiry reported adversely by the Committee on Armed Services, House Resolution 1078, directing the Secretary of Defense, to the extent not incompatible with the public interest, to furnish, not later than seven days after adoption of the resolution, information relating to American air and naval bombardment of North Vietnam since Mar. 1, 1972, including (1) the number of sorties flown and types of ordnance used each month; (2) post-action reports and bomb damage assessments, both written and photographic; and (3) specific descriptions and photographic evidence of all damage to dikes, cit-

1. 117 CONG. REC. 23808, 92d Cong. 1st Sess.

2. 118 CONG. REC. 28365, 92d Cong. 2d Sess.

ies, and villages of North Vietnam.

§ 2.7 The House laid on the table a resolution of inquiry directing the President and Secretary of Defense to furnish information relating to American bombing of North Vietnam in 1972 and 1973.

On Mar. 6, 1973,[3] the House by voice vote tabled a resolution of inquiry reported adversely by the Committee on Armed Services, House Resolution 26, directing the President[4] and Secretary of Defense within 10 days after adoption of the resolution to furnish the House information relating to American bombing of North Vietnam from Dec. 17, 1972, through Jan. 3, 1973, including: (1) the number of sorties flown; (2) tonnage of bombs and shells fired or dropped; (3) the number and nomenclature of American airplanes lost; (4) the number of Americans killed, wounded, captured, and missing in action; (5) best available estimates of North Vietnamese casualties; (6) the cost of all bombing and shelling; and (7) the extent of damage to any and all facilities struck by bombs.

Parliamentarian's Note: House Resolution 26 was technically not privileged because the request for information on the "extent of damage" to facilities struck by bombs required an opinion or investigation.[5]

On the same date,[6] the House also tabled House Resolutions 114, 115, and 143, which were identical to House Resolution 26, except that they did not mention the President or "extent of damage" to facilities struck by bombs.

§ 2.8 The House laid on the table a privileged resolution of inquiry directing the Secretary of Defense to furnish certain information relating to prisoner of war camps in North Vietnam and American bombing in North Vietnam.

On Aug. 16, 1972,[7] the House by voice vote tabled a privileged resolution of inquiry, House Resolution 1079, reported adversely by

3. 119 CONG. REC. 6383, 6384, 93d Cong. 1st Sess.

4. To "direct" the President to furnish information contravenes standard practice. Although the House "directs" a head of an executive department, it usually "requests" the President to furnish information. See 3 Hinds Precedents §§ 1856, 1895.

5. See Rule XXII clause 5, *House Rules and Manual* § 857 (1973) and Ch. 24, infra, for discussions of the requirements for privileged status.

6. 119 CONG. REC. 6384, 6385, 93d Cong. 1st Sess., Mar. 6, 1973.

7. 118 CONG. REC. 28365, 92d Cong. 2d Sess.

the Committee on Armed Services, directing the Secretary of Defense, to the extent not incompatible with the public interest, to furnish to the House not later than seven days after the adoption of the resolution: (1) maps showing all known or suspected prisoner of war camps in North Vietnam; (2) maps showing all bombing strikes and naval bombardments from Mar. 1, 1972, to date; and (3) rules of engagement promulgated for the bombing of North Vietnam for the same period, and a description of procedures, policies, and actions taken by American Armed Forces to prevent danger to American prisoners of war.

Laotian Operations

§ 2.9 The House laid on the table a privileged resolution of inquiry directing the Secretary of State to furnish the House certain information respecting bombing operations in northern Laos.

On July 7, 1971,[8] the House by voice vote agreed to table a privileged resolution of inquiry reported adversely by the Committee on Foreign Affairs, House Resolution 495, directing the Secretary of State, to the extent not incompatible with the public interest, to furnish, within 15 days after adoption of the resolution, any documents respecting the rules of engagement and targeting, and procedures followed by the U.S. Ambassador in Laos with respect to the direction and control of American bombing operations in northern Laos during the period from Jan. 1, 1965, through June 21, 1971, together with the most recent aerial photographs of 196 Laotian villages which were identified in the resolution.

§ 2.10 The House laid on the table a privileged resolution of inquiry directing the Secretary of State to furnish information regarding American, Thai, and other foreign nation military and diplomatic operations in Laos.

On July 7, 1971,[9] the House by a roll call vote of yeas 261 to nays 118, tabled a privileged resolution of inquiry reported adversely by the Committee on Foreign Affairs, House Resolution 492, directing the Secretary of State, to the extent not incompatible with the public interest, to furnish to the House, not later than 15 days

8. 117 CONG. REC. 23808–10, 92d Cong. 1st Sess.

9. 117 CONG. REC. 23800, 23807, 23808, 92d Cong. 1st Sess.

after adoption of the resolution, any documents containing policy instructions or guidelines given to the American Ambassador in Laos for the purpose of his administration of certain operations in Laos, between Jan. 1, 1964, and June 21, 1971. Information was sought particularly with regard to: (1) covert Central Intelligence Agency operations in Laos; (2) Thai and other foreign armed forces operations in Laos; (3) American bombing operations other than along the Ho Chi Minh Trail; (4) American Armed Forces operations in Laos; and (5) United States Agency for International Development operations which have served to assist, directly or indirectly, military or Central Intelligence Agency operations in Laos, and details of such assistance.

American Bombing of Cambodia and Laos

§ 2.11 The House laid on the table a privileged resolution of inquiry directing the Secretary of State to furnish information relating to American bombing of Cambodia and Laos in 1973.

On May 9, 1973,[10] the House by voice vote tabled a privileged resolution of inquiry reported adversely by the Committee on Armed Services, House Resolution 379, directing the Secretary of State to furnish within 10 days after adoption of the resolution information relating to American bombing of Cambodia and Laos from Jan. 27, 1973, through Apr. 30, 1973, including: (1) the number of sorties flown; (2) tonnage of bombs and shells fired and dropped; (3) number and nomenclature of American airplanes lost; (4) number of Americans killed, wounded, captured, or missing in action; (5) cost of all American bombing and shelling; (6) number of sorties flown by American military airplanes for purposes other than bombing; (7) cost of all actions other than bombing; (8) number, rank, location, and nature of activity of American ground personnel in Cambodia and Laos; (9) the order of battle of all forces, both combat and noncombat, in Cambodia and Laos, including North Vietnamese, ARVN (Army of the Republic of [South] Vietnam), Viet Cong, American, and indigenous; and, for the period from Oct. 30, 1972, through Jan. 27, 1973, certain related information, including the tonnage of bombs dropped and sorties flown by American airplanes emanating from Thailand.

10. 119 CONG. REC. 14990, 14991, 14994, 93d Cong. 1st Sess.

The resolution also inquired as to the legal authority for American military activity in Cambodia and Laos since Jan. 27, 1973; and the extent of involvement of American Embassy personnel in military operations in or over Cambodia and Laos between Jan. 27, 1973, through Apr. 30, 1973.

Answers to questions in this resolution of inquiry were provided by witnesses from the Department of Defense at a hearing of the Committee on Armed Services held on May 8, 1973. Following this hearing, committee members voted 36 yeas to 0 nays to report the resolution adversely.(11)

The motion to table was offered immediately after the resolution. was reported because the Chairman of the Committee on Armed Services, F. Edward Hébert, of Louisiana, requested and obtained unanimous consent for immediate consideration of the resolution, thereby waiving the three-day availability requirement of Rule XI clause 27(d)(4).

11. See 119 CONG. REC. 14991–93, 93d Cong. 1st Sess., for a transcript of answers and remarks of F. Edward Hébert (La.), Chairman of the Committee on Armed Services, explaining the hearing on May 8, 1973.

Military Aid to Forward-defense and Mediterranean Nations

§ 2.12 The House laid on the table a privileged resolution of inquiry directing the Secretary of Defense to furnish information regarding the extent of military assistance to forward-defense and Mediterranean nations.

On Aug. 3, 1971,(12) the House by voice vote tabled a privileged resolution of inquiry reported adversely by the Committee on Armed Services, House Resolution 557, directing the Secretary of Defense, to the extent not incompatible with the public interest, to furnish to the House, not later than 15 days after adoption of the resolution, any documents regarding all forms of American military aid extended to the forward-defense nations of Greece, Turkey, Nationalist China, and South Korea as well as to Israel, Jordan, Morocco, Libya, Tunisia, Lebanon, Syria, and Saudi Arabia, between Jan. 1, 1969, and July 21, 1971.(13)

12. 117 CONG. REC. 29063, 29064, 92d Cong. 1st Sess.

13. See Ch. 24, infra, for a discussion of the proper time to call up a resolution of inquiry.

Presidential Agreements With British Prime Minister

§ 2.13 The House agreed to a privileged resolution of inquiry directing the Secretary of State to transmit information regarding any agreements made by the President and the Prime Minister of Great Britain during conversations held in Jan. 1952, after rejecting a motion to lay the resolution on the table.

On Feb. 20, 1952,(14) after rejecting the motion to table by a roll call vote of yeas 150 to nays 184, the House by a roll call vote of yeas 189 to nays 143, approved a privileged resolution of inquiry reported adversely by the Committee on Foreign Affairs, House Resolution 514, directing the Secretary of State, at the earliest practicable date, to transmit to the House information with respect to any agreements, commitments, or understandings entered into by the President and Prime Minister of Great Britain in the course of their conversations during Jan. 1952, which might require the shipment of additional members of the armed forces beyond the continental limits of the United States or involve American forces in armed conflict on foreign soil.(15)

The adverse report of the Committee on Foreign Affairs, the letter from the Assistant Secretary of State for the Secretary stating the position of the Department of State that sufficient information had been supplied, and communiques relating to the subject matter of the resolution were included in the Record.(16) On Mar. 5, 1952,(17) a letter, dated Mar. 4, 1952, from the Secretary of State, Dean Acheson, citing the President's negative response to a question about such agreements at a press conference on Feb. 20, 1952, was laid before the House, referred to the Committee on Foreign Affairs, and ordered printed.

Mexican-American Relations

§ 2.14 The House laid on the table a privileged resolution of inquiry directing the Secretary of State to furnish information relating to Mexican-American relations.

On Feb. 7, 1937,(18) the House by voice vote tabled a privileged

14. 98 CONG. REC. 1205, 1207, 1208, 1215, 1216, 82d Cong. 2d Sess.

15. See Ch. 24. infra, for a discussion of the time to report a resolution of inquiry.

16. See 98 CONG. REC. 1205, 1206, 82d Cong. 2d Sess., for these materials.

17. 98 CONG. REC. 1892, 82d Cong. 2d Sess.

18. 84 CONG. REC. 1181, 1182, 76th Cong. 1st Sess.

resolution of inquiry reported adversely by the Committee on Foreign Affairs, House Resolution 78, directing the Secretary of State to transmit, within 15 days from receipt of the resolution answers to questions relating to whether: (1) Mexico bartered oil from expropriated American and British properties for German, Italian, and Japanese products; (2) American investments in Mexico were eliminated; (3) reported loss of American investments led to reductions in American-Mexican trade; (4) Mexico appointed a Minister to Berlin and Japanese experts participated in Mexican projects; (5) State Department officials sought to obtain adequate compensation for holders of American bonds in Mexican national railroads expropriated in 1937; (6) the State Department has evidence that Germany, Italy, and Japan had an agreement to absorb Mexican oil prior to expropriation of American and British properties; (7) Mexican real wages fell since 1937; (8) the Ambassador informed the State Department that railroads and oil properties would be expropriated or whether news of that development was a surprise; (9) the State Department possessed a full record of speeches and public remarks as well as reports to the Secretary of State relating to Mexican expropriation of American properties and Mexico's relations with Germany, Italy, and Japan (the resolution sought the full text of these documents); (10) the Department of State was satisfied that the American Ambassador in Mexico City took steps to protect remaining American investments; and (11) the Department of State agreed to expropriation of American-owned property in Mexico.

Speaker William B. Bankhead, of Alabama, ruled out of order a question of consideration raised after the motion to table was made but prior to the vote.

Removal of German Industrial Plants

§ 2.15 The House agreed to a privileged resolution requesting the Secretary of State and Secretary of Defense to transmit information relating to the dismantlement and removal of industrial plants from post-war Germany. The Under Secretary of State responded for the Department of State and Department of Defense.

On Dec. 18, 1947,[19] the House by voice vote approved a privi-

19. 93 CONG. REC. 11636, 11640, 80th Cong. 1st Sess.

leged resolution of inquiry reported favorably from the Committee on Foreign Affairs, House Resolution 365, requesting the Secretary of State and the Secretary of Defense to transmit information relating to: (1) the number of plants in Germany which were dismantled and removed from that country; (2) the character and capacity of plants removed and remaining to be dismantled; (3) the number of remaining plants which could be converted to peacetime production and were capable of contributing to German export trade; (4) the basis for the determination that a particular plant was surplus; (5) the amount of material and goods, and their cost needed to be sent from the United States to compensate for production of plants removed and scheduled for dismantling; (6) whether plants were removed from any of the German zones beyond the limits prescribed or contemplated in the Yalta agreement; (7) whether essential agricultural produce was removed from any zone for delivery outside Germany; (8) the extent of removal of harbor facilities and transportation equipment; and (9) whether the U.S. government had taken appropriate steps to delay temporarily further dismantling of plants in western Germany, in order to permit further congressional study to determine whether transfers prejudice a general recovery program for western Europe.

A preamble was added by committee amendment, following voice vote approval of the resolution as amended.

On Jan. 26, 1948,[20] a letter, dated Jan. 24, 1948, from the Under Secretary of State, Robert A. Lovett, responding for the Department of State and Department of Defense to the resolution of inquiry was laid before the House and referred to the Committee on Foreign Affairs.

American Policy on Formosa

§ 2.16 The House tabled a privileged resolution of inquiry requesting the President to furnish information about American policy on Formosa.

On Feb. 9, 1950,[1] the House by voice vote agreed to table a privileged resolution of inquiry reported adversely by the Committee on Foreign Affairs, House Resolution 452, requesting the President, if not incompatible with the public interest, to furnish

20. 94 CONG. REC. 541, 542, 80th Cong. 2d Sess.

1. 96 CONG. REC. 175.3—55, 81st Cong. 2d Sess.

within 15 days after adoption of the resolution, full and complete answers to questions relating to the President's statement of Jan. 5, 1950, on policy toward Formosa and the current situation in China and the Far East.[2]

Domestic Affairs—Evidence of Criminal Activity

§ 2.17 The House discharged a committee from further consideration and laid on the table a privileged resolution of inquiry directing the Acting Attorney General to furnish all documents and items of evidence in the custody of the Watergate Special Prosecutor as of Oct. 20, 1973.

On Nov. 1, 1973,[3] the House discharged the Committee on the Judiciary from further consideration and tabled House Resolution 634, directing the Acting Attorney General, to the extent not incompatible with the public interest, to furnish, not later than 15 days after adoption of the resolution, true copies of all papers, documents, recordings, memoranda, and items of evidence in the custody of the Special Prosecutor and Director of the Special Prosecution Force, as of noon, Saturday, Oct. 20, 1973.[4]

Parliamentarian's Note: President Richard M. Nixon dismissed the Special Prosecutor, Archibald Cox, on the evening of Oct. 20, 1973.

When the Acting Attorney General subsequently turned the documents over to a federal court, thus assuring their preservation, the Member who introduced this resolution of inquiry, Mr. Paul M. McCloskey, of California, decided not to proceed further with it and sought and obtained unanimous consent to discharge the committee from further consideration and to table the resolution.

§ 2.18 The House discharged a committee from further consideration and laid on the table a privileged resolution

2. See Ch. 24, infra, for a discussion of the time to report back a resolution of inquiry.

3. 119 CONG. REC. 35644, 93d Cong. 1st Sess.

4. H. Res. 634 read as follows:

Resolved, That the Acting Attorney General of the United States, to the extent not incompatible with the public interest, is directed to furnish to the House of Representatives not later than fifteen days following the adoption of this resolution, true copies of all papers, documents, recordings, memorandums, and items of evidence in the custody of the Special Prosecutor and Director, Watergate Special Prosecution Force, Archibald Cox as of noon, Saturday, October 20, 1973.

of inquiry directing the Attorney General to furnish all factual information as to whether the Vice President may have accepted bribes.

On Oct. 10, 1973,[5] the House, pursuant to the unanimous-consent request of Mr. Paul Findley, of Illinois, discharged the Committee on the Judiciary from further consideration and tabled House Resolution 572, a privileged resolution of inquiry directing the Attorney General to inform the House of all facts within the knowledge of the Department of Justice relating to whether the Vice President, Spiro T. Agnew, accepted bribes or received consideration for services rendered or promised in the performance of his official responsibilities as a public official in Maryland or as Vice President or failed to declare his income for tax purposes.[6]

Parliamentarian's Note: Vice President Agnew resigned his office, and entered a plea of nolo contendere to a count of failure to report certain income, on Oct. 10, 1973.

§ 2.19 The House laid on the table a privileged resolution of inquiry directing the Attorney General to transmit information relating to the kidnapping of David Levinson and Robert Minor.

On May 16, 1935,[7] the House by a vote of yeas 276, to nays 40, tabled a privileged resolution of inquiry reported by the Committee on the Judiciary, House Resolution 219, directing the Attorney General to transmit to the House at the earliest practical moment: (1) copies of all official information on file in the Department of Justice or in possession of its agents concerning the kidnapping of David Levinson and Robert Minor, in Gallup, New Mexico, on May 2, 1935; (2) information as to whether a person or persons had been apprehended or taken into custody and charged with kidnapping and, if not, whether

5. 119 CONG. REC. 33687, 93d Cong. 1st Sess.

6. H. Res. 572 read as follows:

Resolved, That the Attorney General of the United States be, and he is hereby directed to inform the House of all the facts within the knowledge of the Department of Justice that the Vice President of the United States, Spiro T. Agnew, accepted bribes or received consideration for services rendered or promised in the performance of his official responsibilities as a public official in the State of Maryland or Vice President of the United States, or failed to declare his income for tax purposes.

7. 79 CONG. REC. 7687, 7688, 74th Cong. 1st Sess.

the Department of Justice had instituted and prosecuted an investigation with a view to bringing to justice those guilty of violating 18 USC § 408a, as amended by Public Law No. 232 of the 73d Congress (May 18, 1934); (3) name or names of all persons questioned in connection with this investigation and statements made by them; (4) information as to whether the crime was completed within Navajo Indian Reservation, western New Mexico; and (5) whether the reservation was under the jurisdiction of the U.S. government and whether the Attorney General had authority to prosecute crimes committed within the reservation.

Speaker Joseph W. Byrns, of Tennessee, overruled a point of order raised against the resolution because it sought information (testimony of witnesses given to New Mexico law enforcement officials) that was not in the possession of the Attorney General.

Security Files on Government Officials

§ 2.20 The House agreed to a resolution of inquiry directing the Secretary of Commerce to transmit a letter from the Director of the Federal Bureau of Investigation to the Secretary regarding the Director of the National Bureau of Standards.

On Apr. 22, 1948,[8] the House by a roll call vote of yeas 302 to nays 29, approved a privileged resolution of inquiry, House Resolution 522, reported favorably by the Committee on Interstate and Foreign Commerce, directing the Secretary of Commerce to transmit forthwith the full text of a letter dated May 15, 1947, written by the Director of the Federal Bureau of Investigation and addressed to the Secretary, relating to Dr. Edward U. Condon, Director of the National Bureau of Standards, about whom allegations of disloyal conduct had been made.[9]

On Apr. 26, 1948,[10] a communication dated Apr. 23, 1948, from the Acting Secretary of Commerce, William C. Foster, refusing to transmit the 1947 letter and citing a directive of President Harry S. Truman dated Mar. 13, 1948, ordering all executive

8. 94 CONG. REC. 4777, 4786, 80th Cong. 2d Sess.

9. See 94 CONG. REC. A2458–A2461, 80th Cong. 2d Sess., Apr. 22, 1948, for letters from former Attorney General Robert H. Jackson and Special Assistant to the Attorney General Peyton Ford and a legal memorandum relating to this incident and the broader issue of executive privilege.

10. 94 CONG. REC. 4879, 80th Cong. 2d Sess.

branch officials to decline to disclose Loyalty Board files to any person or agency was referred to the Committee on Interstate and Foreign Commerce and ordered to be printed.(11)

Fish Imports

§ 2.21 The House agreed to a resolution requesting the Secretary of State to study the effect of increased imports on the domestic fishing industry. The Assistant Secretary responded for the Secretary.

On Apr. 4, 1949,(12) the House by voice vote approved a resolution reported favorably by the Committee on Merchant Marine and Fisheries and called from the Consent Calendar.(13) House Resolution 147 requested the Secretary of State to make an immediate study on the effect on the domestic fishing industry of increasing imports of fresh and frozen fish, especially ground fish fillets, into the United States; and, with the advice of and in coordination with appropriate executive departments and independent agencies of government, to recommend means by which the American fishing industry may survive; and to report not later than May 15, 1949.

The resolution contained a preamble.

On May 17, 1949,(14) a letter and report of findings from the Assistant Secretary of State, Ernest A. Gross, responding for the Secretary and Department to the resolution of inquiry, was laid before the House, referred to the Committee on Merchant Marine

11. See § 5.3, infra, for a discussion of House approval, and the text, of H.J. Res. 342, directing officers and employees of the executive branch to provide information to Congress. See also the minority report to H. REPT. NO. 1595, pp. 8–10 which accompanies the joint resolution and contains a Mar. 15, 1948, memorandum from President Truman stating precedents of Presidential refusals to respond to requests for information.

12. 95 CONG. REC. 3820–22, 81st Cong. 1st Sess.

13. *Parliamentarian's Note:* This measure would have been subject to points of order that it was not privileged if the committee chairman had sought to call it up as privileged business because it required an investigation (see 3 Hinds' Precedents §§ 1872–74 and 6 Cannon's Precedents §§ 422, 427, 429, and 432) and contained a preamble (see 3 Hinds' Precedents §§ 1877, 1878 and 6 Cannon's Precedents §§ 422, 427). See also Rule XXII clause 5, *House Rules and Manual* § 857 (1973).

14. 95 CONG. REC. 6372, 81st Cong. 1st Sess.

and Fisheries, and ordered printed.

Foreign Sales of Short Supply Goods

§ 2.22 The House agreed to a privileged resolution of inquiry requesting the Secretary of Commerce to furnish information regarding sales to foreign countries of supplies, shortages of which might endanger national defense and security.

On Dec. 5, 1947,[15] the House by voice vote approved a privileged resolution of inquiry, House Resolution 366, reported favorably and unanimously by the Committee on Interstate and Foreign Commerce, with a committee amendment requesting[16] the Secretary of Commerce to furnish the House with information concerning shipments of heavy machinery, farm and railroad equipment, motor vehicles, metals and metal products, coal, petroleum and petroleum products, building materials, meats and grains, and all other supplies shortages of which might endanger national defense or security, which were made to each foreign country since Jan. 1, 1947, including the most recent date for which figures were obtainable; names of firms or individuals making these sales, dates orders were received and supplies were delivered, and the nature of payments made in return for supplies; and information revealing the extent of unfilled orders for the above-listed supplies which each foreign country has on record with firms or individuals in the United States as of the date of adoption of the resolution.

On Jan. 8, 1948,[17] a letter in response dated Jan. 7, 1948, accompanied by reports of study findings from the Acting Secretary of Commerce, William C. Foster, were laid before the House and referred to the Committee on Interstate and Foreign Commerce.

Domestic Energy Sources

§ 2.23 The House agreed to a resolution of inquiry requesting the Secretary of the Interior to furnish information

15. 93 CONG. REC. 11075, 11076, 80th Cong. 1st Sess.

16. *Parliamentarian's Note:* To "request" the Secretary of Commerce to furnish information deviates from the standard practice which is to "request" the President and "direct" a head of an executive department to furnish information. See 3 Hinds' Precedents §§ 1856, 1895 and Rule XXII clause 5, *House Rules and Manual* § 856 (1973).

17. 94 CONG. REC. 39, 80th Cong. 2d Sess.

relating to domestic availability of petroleum and coal. The Secretary responded by providing reports.

On Feb. 16, 1948,[18] the House by voice vote approved a resolution of inquiry (H. Res. 385) reported favorably by the Committee on Public Lands and called from the Consent Calendar requesting the Secretary of the Interior to furnish the House full information in his possession concerning domestic availability of fuel oil, gasoline, petroleum products, and coal, as well as information on the steps the government should take to make the proper and necessary supply available.

On Apr. 30, 1948,[19] a letter dated Apr. 30, 1948, and reports from Secretary of the Interior J. A. Krug, responding to the resolution of inquiry, were laid before the House and referred to the Committee on Public Lands.

Busing

§ 2.24 After discharging a committee from further consideration of the measure, the House agreed to a resolution of inquiry directing the Secretary of Health, Education, and Welfare to furnish a list of public school systems which receive federal funds and engage in busing of schoolchildren to achieve racial balance, and any departmental rules and regulations regarding busing. The Secretary responded that he was unable to provide the information.

On Aug. 2, 1971,[20] the House by a roll call vote of yeas 252 to nays 129 discharged the Committee on Education and Labor from further consideration and then by a roll call vote of yeas 351 to nays 36, agreed to House Resolution 539, directing the Secretary of Health, Education, and Welfare, to the extent not incompatible with the public interest, to furnish to the House, not later than 60 days after adoption of the resolution, any documents containing a list of public school systems which, during the period between Aug. 1, 1971 through June 30, 1972, would be receiving federal funds and busing schoolchildren to achieve racial balance; and any documents respecting departmental rules and regulations regarding use of federal funds ad-

18. 94 CONG. REC. 1328, 1329, 80th Cong. 2d Sess.

19. *Id.* at p. 5163.

20. 117 CONG. REC. 28863, 28869, 92d Cong. 1st Sess.

ministered by the department for busing.

On Aug. 3, 1971,[1] the Secretary of Health, Education, and Welfare, Elliot L. Richardson, in a letter of the same date stated that because the department did not administer busing programs, it did not have a reason either to compile a list of school districts which bus schoolchildren or to draft rules or regulations respecting busing. He enclosed a memorandum from the Associate Commissioner, Equal Educational Opportunity, Office of Education, regarding the policy on funding transportation costs for the Emergency School Assistance Program, and a proposed amendment to a pending bill, H.R. 2266, the Emergency School Aid Act.

The letter, memorandum, and proposed amendment were laid before the House and referred to the Committee on Education and Labor.

Postal Temporaries

§ 2.25 The House laid on the table a privileged resolution of inquiry directing the Postmaster General to furnish the names of persons employed temporarily during the summer of 1965.

On Sept. 16, 1965,[2] the House by a roll call vote of yeas 185 to nays 181, tabled a privileged resolution of inquiry reported adversely by the Committee on Post Office and Civil Service, House Resolution 574, directing the Postmaster General to furnish to the House the names of all persons employed by the Post Office Department as temporary employees at any time during the period beginning on May 23, 1965, and ending on Sept. 6, 1965.[3]

Information Furnished to Committee

§ 2.26 Two resolutions of inquiry directing the Secretary of State to furnish information to a committee rather than to the House were called up and considered as privileged business.

On Oct. 20, 1971,[4] two identically worded resolutions of inquiry, House Resolution 632 and House Resolution 638, directing the Secretary of State to furnish information to a committee relating to the South Vietnamese elec-

1. 117 CONG. REC. 29137, 92d Cong. 1st Sess.

2. 111 CONG. REC. 24030, 24034, 89th Cong. 1st Sess.

3. See Ch. 24, infra, for a discussion of the privileged status of resolutions of inquiry.

4. 117 CONG. REC. 37055, 37057, 92d Cong. 1st Sess.

tion of Oct. 3, 1971,[5] were called up and considered as privileged business. The privileged status was not questioned when these resolutions were called up.[6]

Parliamentarian's Note: The privileged status of these resolutions could have been questioned because they directed the Secretary to furnish information to the committee rather than directly to the House. The only precedent on this point is 3 Hinds' Precedents § 1860, in which Speaker Joseph G. Cannon, of Illinois, ruled that a resolution authorizing a committee to request information from the Postmaster General and requesting him to send certain papers to the committee was privileged as a resolution of inquiry.

§ 3. Executive Branch Refusals to Provide Information

The authority of Congress to obtain information needed to legislate effectively and oversee other branches has often been challenged by the efforts of the executive branch to withhold material which that branch considers confidential, including information relating to military affairs and foreign policy. During the period prior to the "Watergate" investigations of 1973 and 1974, case law on these two potentially conflicting prerogatives developed independently.[7] Generally, such a conflict was averted, not because the executive branch complied with all requests and subpenas[8] but because the Congress

5. See § 2.4, supra, for the content of these resolutions.

6. See § 2.4, supra, for the disposition of the resolutions.

7. See, for example, *Kilbourn* v *Thompson*, 103 U.S. 168 (1881), *McGrain* v *Daugherty*, 273 U.S. 135 (1927), *Sinclair* v *United States*, 279 U.S. 263 (1929), *Watkins* v *United States*, 354 U.S. 178 (1957), *Barenblatt* v *United States*, 360 U.S. 109 (1959), for judicial recognition of legislative authority to obtain information; and *United States* v *Burr*, 25 F Cas. 187 (No. 14, 694) (cc Va. 1807); *United States* v *Reynolds*, 345 U.S. 1 (1953); and *McPhaul* v *United States*, 364 U.S. 372, 382–383 (1960), for judicial recognition of executive authority to withhold information.

8. Commenting on a survey conducted by the Senate Subcommittee on Separation of Powers for the period 1964 to 1973, Chairman Sam J. Ervin, Jr., of North Carolina, stated that the executive branch on 284 occasions refused to provide testimony or documents requested by House or Senate committees or subcommittees. These refusals were in response to oral or written requests, as distinguished from subpenas. See Senate Committee on the Judiciary, Sub-

when rebuffed did not exhaust all procedures to enforce its requests. The Watergate crisis, of course, brought the law on the subject into sharper focus.[9]

Refusals of the executive branch to provide information to the Congress, while representing only a small portion of executive responses to requests for information, have frequently occurred. Such refusals have generally been in response to informal requests for information as distinguished from a subpena. Such refusals to provide information to the Congress have been based on the following grounds:[10] (1) executive privilege, (2) alleged prerogative of office, (3) law or pretext of law, (4) classified information, (5) prejudice to litigation or investigation, (6) "inappropriateness," and, (7) other reasons, including previous submission of information, personal inconvenience, possible "adverse reaction," and claims that compliance would "hamper the agency and create adverse publicity," "create public concern," or "set a precedent."

The following are examples of instances in which the President or executive officers have refused to provide information to the Congress.

Examples of refusals by the President or executive branch officers during the administration of President Franklin D. Roosevelt include the following:[11]

—Federal Bureau of Investigation records and reports were refused to

committee on Separation of Powers, Refusals by the Executive Branch to Provide Information to the Congress 1964–1973, 93d Cong. 2d Sess. (1974), Foreword.

The only constitutional requirement relating the President's duty to provide information to Congress is article II, § 3, which provides, "He [the President] shall from time to time give to the Congress Information of the State of the Union, and recommend to their consideration such Measures as he shall judge necessary and expedient. . . ."

9. See § 4, infra, for a discussion of a suit against the President to enforce a Senate subpena.

10. These categories appear in a document of the Senate Committee on the Judiciary, Subcommittee on Separation of Powers, Refusals by the Executive Branch to Provide Information to the Congress 1964–1973, 93d Cong. 2d Sess. (1974) pp. 4–9.

11. This list, which is not exhaustive but merely illustrative, is taken from a memorandum from Attorney General Herbert Brownell to President Eisenhower and reprinted in Senate Committee on Government Operations, Special Senate Investigation on Charges and Countercharges Involving: Secretary of the Army Robert T. Stevens, John G. Adams, H. Struve Hensel and Senator Joe McCarthy, Roy M. Cohn, and Francis P. Carr, 83d Cong. 2d Sess., hearing of May 17, 1954, pp. 1269–1275.

congressional committees, in the public interest (40 Opinions of the Attorney General [hereinafter cited as Op. A.G.] No. 8, Apr. 30, 1941).

—The Director of the Federal Bureau of Investigation refused to give testimony or to exhibit a copy of the President's directive requiring him, in the interests of national security, to refrain from testifying or from disclosing the contents of the Bureau's reports and activities (Hearings, Vol. 2, House, 78th Cong. Select Committee to Investigate the Federal Communications Commission [1944] p. 2337).

—Communications between the President and the heads of departments were held to be confidential and privileged and not subject to inquiry by a committee of one of the Houses of Congress (Letter dated Jan. 22, 1944, signed Francis Biddle, Attorney General, to Select Committee, etc.).

—The Director of the Bureau of the Budget refused to testify and to produce the bureau's files, pursuant to subpoena which had been served upon him, because the President had instructed him not to make public the records of the bureau due to their confidential nature. Public interest was again invoked to prevent disclosure (Reliance placed on Attorney General's Opinion in 40 Op. A.G. No. 8, Apr. 30, 1941).

—The Secretaries of War and Navy were directed not to deliver documents which the committee had requested, on grounds of public interest. The Secretaries, in their own judgment, refused permission to Army and Navy officers to appear and testify because they felt that it would be contrary to the public interests (Hearings, Select Committee to Investigate the Federal Communications Commission, Vol. 1, pp. 46, 48–68).

The following examples arose during the administration of President Harry S. Truman:[12]

—An FBI letter-report on Dr. Edward U. Condon, Director of National Bureau of Standards, was refused by Secretary of Commerce (Mar. 4, 1948).

—The President issued a directive forbidding all Executive departments and agencies to furnish information or reports concerning the loyalty of their employees to any court or committee of Congress, unless the President approves (Mar. 15, 1948).

—Dr. John R. Steelman, Confidential Adviser to the President, refused to appear before the Committee on Education and Labor of the House, following the service of two subpoenas upon him. The President directed him not to appear (March 1948).

—The Attorney General wrote Senator Ferguson, Chairman of the Senate Investigations Subcommittee, that he would not furnish letters, memoranda, and other notices which the Justice Department had furnished to other government agencies concerning W. W. Remington (Aug. 5, 1948).

—Senate Resolution 231 having directed a Senate subcommittee to procure State Department loyalty files, President Truman refused to permit such files to be furnished, following vigorous opposition by J. Edgar Hoover to the request (Feb. 22, 1950).

—The Attorney General and the Director of the FBI appeared before a

12. *Id.*

Senate subcommittee. Mr. Hoover's historic statement of his reasons for refusing to furnish raw files was approved by the Attorney General (Mar. 27, 1950).

—General Bradley refused to divulge conversations between the President and his advisers to the combined Senate Foreign Relations and Armed Services Committees (May 16, 1951).

—President Truman directed the Secretary of State to refuse to the Senate Internal Security Subcommittee the reports and views of foreign service officers (Jan. 31, 1952).

—Acting Attorney General Perlman laid down a procedure for complying with requests for inspection of Department of Justice files by the Committee on the Judiciary. Requests on open cases would not be honored. As to closed cases, files would be made available. All FBI reports and confidential information would not be made available. As to personnel files, they are never disclosed (Apr. 22, 1952).

—President Truman instructed the Secretary of State to withhold from a Senate Appropriations Subcommittee files on loyalty and security investigations of employees—such policy to apply to all Executive agencies. The names of individuals determined to be security risks would not be divulged. The voting record of members of an agency loyalty board would not be divulged (Apr. 3, 1952).

During the administration of President Dwight D. Eisenhower, the following instances arose:[13]

—In a letter dated May 17, 1954, President Eisenhower ordered Secretary of Defense Wilson to instruct Department of Defense employees not to testify or produce documents about any executive branch communications or conversations at the Army-McCarthy hearings before the Senate Subcommittee on Permanent Investigations.

—On July 18, 1955, the General Manager of the Atomic Energy Commission refused to provide the Senate Subcommittee on Antitrust and Monopoly with papers relating to the contract between the Commission and the Mississippi Valley Generating Company (the Dixon-Yates contract) for construction of an electrical powerplant and sale of the generated power to the United States.

—In letters dated July 21, and July 26, 1955, Presidential Assistant Sherman Adams declined an invitation to appear before the Senate Subcommittee on Antitrust and Monopoly

13. This list, which is merely illustrative, was compiled from instances cited in Kramer, Robert and Marcuse, Herman, Executive Privilege—A Study of the Period 1953–1960, which contained responses to an Apr. 2, 1957, letter from the Chairman of the Senate Subcommittee on Constitutional Rights requesting agencies and departments to report instances of refusals to provide information since May 17, 1954. See also House Subcommittee on Government Information of Committee on Government Operations, Availability of Information from Federal Agencies (the First Five Years and Progress of a Study, Aug. 1959–July 1960), H. REPT. NO. 2084, 86th Cong. 2d Sess., 5–35 (1960), for a chart listing refusals.

to testify about his request for a postponement of the June 13, 1955, Securities and Exchange Commission hearing on a contract between the Atomic Energy Commission and the Mississippi Valley Generating Company (the Dixon-Yates contract) for construction of an electrical powerplant and sale of the generated power to the United States.

—On Dec. 5, 1955, before the Senate Subcommittee on Antitrust and Monopoly, the Chairman of the Atomic Energy Commission refused to answer questions relating to executive branch discussions about the contract between the Commission and the Mississippi Valley Generating Company (the Dixon-Yates contract) for construction of an electrical powerplant and sale of the generated power to the United States.

—The Administrator of the Small Business Administration, who had received a subpena duces tecum, refused to provide a subcommittee of the Senate Committee on Post Office and Civil Service with security files about a named individual on the ground that President Eisenhower's Executive Order 10450 required confidential preservation of employee security files.

—The International Cooperation Administration refused to provide the General Accounting Office with evaluation reports on American foreign assistance programs to the following countries: Taiwan and Pakistan, 1957; India, Sept. 1959; Guatemala, Mar. 1960; Bolivia, May 1960; Brazil, May 1960; Laos, Aug. 1959; Vietnam, 1959.

—On Apr. 13, 1957, the Department of Defense refused to provide the Chairman of the House Subcommittee on Public Information with investigative memoranda and a report of conversations between the Department and newsmen.

—On Jan. 12, 1957, the Department of the Army refused to provide the Chairman of the House Subcommittee on Public Information with an investigative file compiled in connection with charges of disloyalty and subversion at the Signal Corps Intelligence Agency.

—In 1956, the Chairman of the Civil Service Commission, who had received a subpena duces tecum, refused to provide the Senate Committee on Post Office and Civil Service with some but not all Federal Employees' Security Program files, documents, and records about three named individuals.

—On Nov. 12, 1956, the Department of Defense refused to provide the Chairman of the House Subcommittee on Public Information with a memorandum of the Under Secretary of the Navy relating to a discussion with an Assistant Secretary of Defense about the Department's responsibility to safeguard intradepartmental communications of an advisory and preliminary nature.

—On July 27 and Dec. 26, 1956, the Office of Defense Mobilization refused to provide the House Subcommittee on Military Operations with copies of command post exercise proclamations issued during Operation Alert 1956.

—In July 1956, the Department of the Army refused to provide the Chairman of the House Armed Services Committee with intradepartmental communications pertaining to an officer's status. A complete statement of the basis for the final decision in the matter was submitted.

—On Feb. 20, 1956, the Secretaries of Defense, State, Commerce, and the Director of the International Cooperation Administration refused to provide the Senate Permanent Investigations Subcommittee with information relating to East-West trade controls and instructed employees who might be called to testify on this matter to refuse to testify.

—On Feb. 3, 1956, the Department of the Interior refused to provide the House Subcommittee on Antitrust and Monopoly with portions of files of the National Petroleum Council which had not been made available to the legislative branch under a long established executive branch policy, as well as documents which had been received by the Council only on the condition that they be kept confidential.

—On Sept. 2–6, 1955, the Department of the Army denied requests of the Committee on House Appropriations for Inspector General's reports and Auditor General's reports. Requested summaries of all actions taken in connection with the contracts under investigation were provided.

—On Sept. 16, 1955, the Department of the Air Force refused to provide the Chairman of the Senate Preparedness Investigating Subcommittee with material derived from an Inspector General's report.

—On Feb. 2, 1956, the Department of the Air Force refused to provide the House Committee on Appropriations with Inspector General's reports and Auditor General's reports.

—On Jan. 25, 1957, the Department of the Air Force refused to provide the Chairman of the House Committee on Post Office and Civil Service with a report of the Inspector General concerning employment conditions in Okinawa. A summary of the findings of the report was submitted.

—On Jan. 17, 1956, the Department of the Air Force refused to provide the Chairman of the Senate Committee on Interstate and Foreign Commerce with information concerning the discharge of a serviceman.

—On Oct. 13, 1955, the Civil Service Commission denied a request from the Clerk of the House Committee on Un-American Activities to review the Commission's files personally.

—In June of 1955, the Department of State refused to disclose to a subcommittee of the Senate Committee on Post Office and Civil Service the personnel and security file of the Federal Employees' Security Program of a named individual.

—In May of 1955, the Atomic Energy Commission refused to provide the Joint Committee on Atomic Energy with copies of certain National Security Council documents which had been mentioned in a memorandum from the commission to the committee regarding a nuclear-powered merchant ship. A statement as to relevant presidentially approved policies contained in those documents was supplied.

—On May 12, 1955, the Department of the Interior refused to provide the House Subcommittee on Public Works and Resources with exchanges of correspondence between departmental officials regarding a departmental order which was submitted.

—On May 5, 1955, the Department of the Interior refused to provide the Subcommittee on Public Works and Resources with surnamed (initialed)

file copies of an amendment to 43 C.F.R. Part 244.

—On Feb. 8, 1955, the Department of the Army refused to provide the Chairman of the Senate Permanent Investigations Subcommittee with the Inspector General's report on Irving Peress, but did provide a detailed summary of all actions taken by the Army in the Peress case.

—On Sept. 6, 1954, the Department of the Army denied a request of the Chairman of the Senate Internal Security Subcommittee for a document entitled "Research Material for Political Intelligence Problem."

—On July 13, 1954, and Mar. 3, 1955, the Bureau of the Budget [14] denied requests for information made by the Senate Internal Security Subcommittee.

—In 1956, the Department of State refused to provide the Senate Permanent Subcommittee on Investigations with material relating to East-West trade policy. Refusals during the administration of President John F. Kennedy include the following: [15]

—On or about June 21, 1962, the Food and Drug Administration refused to provide the House Interstate and Foreign Commerce Committee with requested files on the drug MEA–29.

—On or about June 27, 1962, the State Department refused to provide the Senate Foreign Relations Committee a copy of a working paper on the "mellowing" of the Soviet Union.

—On or about Feb. 7–8, 1963, General Maxwell D. Taylor, during testimony before the House Department of Defense Appropriations Subcommittee, refused to discuss the Bay of Pigs invasion as "it would result in another highly controversial, divisive public discussion among branches of our Government which would be damaging to all parties concerned.

The following refusals occurred during the administration of President Lyndon B. Johnson: [16]

—On Apr. 4, 1968, the Department of Defense refused to provide the Senate Foreign Relations Committee a copy of the Command Control Study of the Gulf of Tonkin incident (U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Separation of Powers. *Executive Privilege: The Withholding of Information by the Executive Branch*. Hearings, 92d Cong., 1st sess. Washington: U.S. Govt. Print. Off., 1971, p. 39 [hereinafter cited as Executive Privilege]).

—On or about Sept. 18, 1968, Treasury Under Secretary Joseph W. Barr and presidential Associate Special Counsel W. DeVier Pierson refused to

14. This name has been changed to the Office of Management and Budget.

15. This list is taken from a study compiled by Harold C. Relyea, Analyst, American National Government, Government and General Research Division, Library of Congress, completed on Mar. 26, 1973, and reprinted in House Committee on Government Operations, [Unnamed] Subcommittee Hearings on Availability of Information to Congress, 93d Cong. 1st Sess. (1973), 264, 271–274. This list with refusals by White House aides excised is reprinted at 119 CONG. REC 10081, 10082, 93d Cong. 1st Sess., Mar. 28, 1973.

16. See 119 CONG. REC. 10081, 93d Cong. 1st Sess., Mar. 28, 1973.

testify before the Senate Judiciary Committee during hearings on the nomination of Associate Justice Abe Fortas to be Chief Justice.

Refusals during the administration of President Richard M. Nixon include the following:[17]

—On July 26, 1969, the Department of Defense refused to provide the five-year plan for military assistance programs to the Senate Foreign Relations Committee (Executive Privilege, p. 40).

—On or about Aug. 9, 1969, the Department of Defense refused to provide the Senate Foreign Relations Committee a copy of a defense agreement between the United States and Thailand.

—On Dec. 20, 1969, the Department of Defense refused to supply the Senate Foreign Relations Committee the "Pentagon Papers" (Executive Privilege, pp. 37–38).

—On or about Mar. 19, 1970, Secretary of Defense Melvin Laird declined an invitation to appear before the Senate Foreign Relations Committee's Disarmament Subcommittee.

—On Nov. 21, 1970, Attorney General John Mitchell refused to supply certain Federal Bureau of Investigation files to the House Intergovernmental Relations Subcommittee (*executive privilege formally invoked*).

—On Mar. 2, 1971, Department of Defense General Counsel J. Fred Buzhardt refused to release an Army investigation report on the 113th Intelligence Group to the Senate Constitutional Rights Subcommittee (Executive Privilege, pp. 402–405).

—On Apr. 10, 1971, the Department of Defense refused to supply continuous monthly reports on military operations in Southeast Asia to the Senate Foreign Relations Committee (Executive Privilege, p. 47).

—On Apr. 19, 1971, the Department of Defense refused to allow three generals to appear before the Senate Constitutional Rights Subcommittee (Id. p. 402).

—On June 9, 1971, the Department of Defense refused to release computerized surveillance records to the Senate Constitutional Rights Subcommittee and refused to agree to a subcommittee report on such records (Executive Privilege, p. 398–399).

—On Aug. 31, 1971, the Department of Defense refused to supply certain foreign military assistance plans to the Senate Foreign Relations Committee (*executive privilege formally invoked*).

—On Sept. 21, 1971, White House Director of Communications Herbert G. Klein declined to appear before the Senate Constitutional Rights Subcommittee (U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Constitutional Rights. *Freedom of the Press. Hearings*, 92d Cong., 1st and 2d sess. Washington: U.S. Govt. Print. Off., p. 1299).

—In Dec., 1971, White House Counsel John W. Dean III indicated neither Frederick Malek nor Charles Colson, both of the White House, would appear before the Senate Constitutional Rights Subcommittee during hearings regarding an F.B.I. investigation of C.B.S. reporter Daniel Schorr (Executive Privilege, p. 425).

—On Feb. 28, 1972, White House Counsel John W. Dean III indicated

17. See 119 CONG. REC. 10081, 10082, 93d Cong. 1st Sess., Mar. 28, 1973.

the unwillingness of presidential aide Henry Kissinger to appear before the Senate Foreign Relations Committee.

—On Mar. 15, 1972, the White House refused to allow the House Foreign Operations and Government Information Subcommittee to obtain country field submissions for Cambodian foreign assistance for the fiscal years 1972 and 1973 while simultaneously denying the Senate Foreign Relations Committee access to U.S.I.A. program planning papers (*executive privilege formally invoked*).

—On Mar. 20, 1972, Frank Shakespeare, Director of the United States Information Agency, refused during testimony before the Senate Foreign Relations Committee to provide copies of U.S.I.A. program planning papers withheld by a formal invocation of executive privilege on March 15.

—On or about Mar. 20, 1972, the State Department refused to supply the Senate Foreign Relations Committee a copy of "Negotiations, 1964–1968: The Half-Hearted Search for Peace in Vietnam."

—On Apr. 27, 1972, Treasury Secretary John Connally refused to testify before the Joint Economic Committee on the matter of the Emergency Loan Guarantee Board refusing to supply requested records on the Lockheed loan to the General Accounting Office.

—On Apr. 29, 1972, White House Counsel John W. Dean III indicated the unwillingness of David Young, Special Assistant to the National Security Council, to appear before the House Foreign Operations and Government Information Subcommittee (U.S. Congress. House. Committee on Government Operations. Foreign Operations and Government Information Subcommittee. *U.S. Government Information Policies and Practices—Security Classification Problems Involving Section (b)(1) of the Freedom of Information Act.* Hearings, 92d Cong., 2d sess. Washington: U.S. Govt. Print. Off., 1972, p. 2453).

—On or about June 8, 1972, Henry Ramirez, Chairman of the Cabinet Committee on Opportunities for the Spanish Speaking, refused to testify before the House Judiciary Subcommittee on Civil Rights.

—On July 26, 1972, Department of Defense Assistant General Counsel Benjamin Forman testified before the Senate Foreign Relations Committee before refusal to discuss weather modification activities in Southeast Asia.

—On Aug. 2, 1972, Henry Ramirez, Chairman of the Cabinet Committee on Opportunities for the Spanish Speaking again refused to testify before the House Judiciary Subcommittee on Civil Rights.

—On Oct. 6, 1972, Securities and Exchange Commission Chairman William J. Casey refused to turn over the Commission's investigative files on I.T.T. to the House Interstate and Foreign Commerce Committee and disclosed that the files were then in the possession of the Justice Department.

—On Oct. 12, 1972, presidential campaign manager Clark MacGregor, former Attorney General John Mitchell, White House Counsel John W. Dean III, and former Commerce Secretary Maurice Stans declined to appear before the House Banking and Currency Committee to discuss matters relating to the Watergate bugging case.

—On or about Nov. 29, 1972, White House Counsel John Wesley Dean III, presidential assistant John Ehrlichman, presidential special consultant Leonard Garment, and Bradley H. Patterson, Garment's assistant, refused to testify before the House Interior and Insular Affairs Committee during hearings on the takeover of the Bureau of Indian Affairs building in Washington.

—On Dec. 5, 1972, Housing and Urban Development Secretary George Romney declined to testify before the Joint Economic Committee on the matter of housing subsidies, saying his appearance was inappropriate in view of his announced resignation from office.

—On or about Dec. 19, 1972, the Department of Defense refused to provide the House Armed Services Committee with documents pertaining to unauthorized bombing raids of interest to the committee as part of their hearings on the firing of Gen. John D. Lavelle.

—On or about Dec. 23, 1972, presidential assistant Peter Flanigan refused to appear before the House Conservation and Natural Resources Subcommittee to discuss an anti-pollution court case against Armco Steel Company.

—On or about Jan. 1, 1973, presidential assistant Henry Kissinger and Secretary of State William Rogers declined invitations to appear before both the House Foreign Affairs and Senate Foreign Relations Committees to discuss resumed Vietnam bombings and the Paris peace talks.

—On Jan. 9, 1973, Admiral Isaac Kidd declined to testify before the Joint Economic Committee regarding his role in action involving the demotion of Gordon Rule, a Navy procurement official who testified earlier before the Committee on Litton Industries' contracts with the Defense Department and the suitability of Roy Ash, a former Litton official, as Director of the Office of Management and Budget.

Collateral References

Availability of Information to Congress, Hearings before the House Committee on Government Operations, [Unnamed] Subcommittee, 93d Cong. 1st Sess. (1973).

Berger, Raoul, *Executive Privilege: A Constitutional Myth*, Harvard University Press, Cambridge, Mass. (1974).

Berger, Raoul, Executive Privilege v Congressional Inquiry, 12 U.C.L.A. L. Rev. 1043–1120, 1286–1364 (1965).

Berger, Raoul, The President, Congress, and the Courts, 83 Yale L.J. 1111 (1974).

Bibby, John F., Committee Characteristics and Legislative Oversight of Administration, 10 Midwest Journal of Political Science, p. 78 (Feb. 1966).

Bishop, The Executive's Right to Privacy: An Unresolved Constitutional Question, 66 Yale L.J. 477 (1957).

Cappalletti, Mauro, and Golden, C. J., Crown Privilege and Executive Privilege: A British Response to an American Controversy, 2.5 Stanford L.J. 836 (1973).

Cooper, Joseph, and Cooper, Ann, The Legislative Veto and the Constitution, 31 Geo. Wash. L. Rev. 467 (1962).

Cox, Archibald, Executive Privilege, 132 U. Pa. L. Rev. 1383 (1974).

Directive on the Need for Maintaining the Confidential Status of Employee Loyalty Records to All Officers and

Employees of the Executive Branch of Government, Public Papers of the Presidents, Harry S. Truman, p. 181 (Mar. 15, 1948); reprinted at 13 Code of Federal Regulations 1359 (Mar. 16, 1948) and 94 CONG. REC. 2929 80th Cong. 2d Sess., Mar. 16, 1948.

Dorsen and Shattuck, Executive Privilege, the Congress, and the Courts, 35 Ohio St. L.J. 1 (1974).

Essays on Executive Privilege, Samuel Poole Weaver Constitutional Law Series, No. 1, American Bar Foundation, Chicago (1974).

Executive Privilege, Secrecy in Government, Freedom of Information, Hearings before the Senate Government Operations Committee, Subcommittee on Intergovernmental Operations, 93d Cong. 1st Sess. (1973).

Executive Privilege: The Withholding of Information by the Executive, Hearings before the Senate Judiciary Committee, Subcommittee on Separation of Powers, 92d Cong. 1st Sess. (1971).

Freund, Paul A., The Supreme Court, 1973 Term—Foreword: On Presidential Privilege, 88 Harv. L. Rev. 13 (1974).

Hardin, Executive Privilege in the Federal Courts, 71 Yale L.J. 879 (1959).

Harris, Joseph P., *Congressional Control of Administration*, The Brookings Institution, Washington, D.C. (1964).

Henderson, Thomas A., *Congressional Oversight of Executive Agencies*, University of Florida Press, Gainesville (1970).

Kramer, Robert, and Marcuse, Herman, Executive Privilege—A Study of the Period 1953–1960, 29 George Washington Law Rev. 623–717 and 827–916 (1961).

Letter of the President to the Secretary of Defense Directing Him to Withhold Certain information from the Senate Committee on Government Operations, Public Papers of the Presidents: Dwight D. Eisenhower, 483 (Mar. 17, 1954).

Memorandum of Attorney General Tom C. Clark to President Truman regarding executive privilege (1948). The original of this memorandum is now kept at the Harry S. Truman Library in Independence, Missouri. A portion appears in the concurring and dissenting opinion of Judge Mackinnon, *Nixon* v *Sirica*, 487 F2d 700, 734–736, No. 9 (D.C. Cir., 1973).

Nathanson, From Watergate to Marbury v Madison: Some Reflections on Presidential Privilege in Current and Historical Perspectives, 16 Ariz. L. Rev. 59 (1974).

Opinion of Attorney General Robert H. Jackson to President Roosevelt regarding refusal to transmit Federal Bureau of Investigation Records to Congressional Committees, 40 Opinions of the Attorney General No. 8, Apr. 30, 1941. This opinion is reprinted at 94 CONG. REC. A2459, A2460, 80th Cong. 2d Sess., Apr. 22, 1948.

Refusals by the Executive Branch to Provide Information to the Congress l964–1973, Survey of the Senate Committee on the Judiciary, Subcommittee on Separation of Powers, 93d Cong. 2d Sess. (1974).

Rodino, Peter, Congressional Review of Executive Action, 5 Seton Hall L. Rev. 489 Spring (1974).

Rogers, William P., Constitutional Law: The Papers of the Executive Branch, 44 A.B.A.J. 941 (1958).

Schwartz, Executive Privilege and Congressional Investigatory Power, 47 California L. Rev. 3 (1959).

Taylor, Telford, *Grand Inquest,* Simon Schuster, Inc., New York, 1955.

The Power of the President to Withhold Information from the Congress, Memorandum of the Attorney General [William P. Rogers], Committee Print of the Senate Judiciary Committee, Subcommittee on Constitutional rights, 85th Cong. 2d Sess. (1958).

Wolkinson, Herman, Demands of Congressional Committees for Executive Papers, 10 Fed. B. J. 103 (1949).

Younger, Irving, Congressional Investigations and Executive Secrecy: A Study in the Separation of Powers, 20 Pitt. L. Rev. 755 1959).

Refusals by Former Executive Branch Officials

§ 3.1 A former President and two former cabinet officers refused to appear in response to subpenas ad testificandum issued by the Committee on Un-American Activities in its investigation of their knowledge of a Federal Bureau of Investigation memorandum they had received while serving in the executive branch.

On Nov. 12 and 13, 1953,[8] a former President and two former cabinet officers refused to testify about their knowledge of a 1946 memorandum from the Director of the Federal Bureau of Investigation, J. Edgar Hoover, concerning alleged Communist Party affiliations of the late Harry Dexter White, who in 1946 served as Assistant Secretary of the Treasury and had been appointed by the President to the United States Mission to the International Monetary Fund.

In a Nov. 12, 1953, letter to the Chairman of the Committee on Un-American Activities, Harold H. Velde, of Illinois, former President Harry S. Truman stated that he declined to comply with the subpena to appear on Nov. 13, 1953, because he assumed that the committee sought to examine him with respect to matters which occurred during his tenure as President. He asserted that if the constitutional doctrine of separation of powers and independence of the Presidency is to have validity, it must also apply to a President after expiration of his term of office. He expressed the view that the doctrine would be destroyed and the President would become a mere arm of the legislative branch if he felt during his term that every act would be a subject of official inquiry and possible distortion for political purposes. Mr.

18. See Beck, Carl, Contempt of Congress, A Study of the Prosecutions Initiated by the Committee on Un-American Activities, 1945–1967, The Hauser Press, New Orleans, 1959, pp. 101–102.

Truman also stated that he would be happy to appear and respond to questions relating to his acts as a private citizen either before or after leaving office and unrelated to his activities as President. The committee took no further action.

Similarly, Supreme Court Associate Justice Tom C. Clark, Attorney General in 1946, refused to appear on Nov. 13, 1953, as ordered by subpena. In a letter to the Chairman of the Committee on Un-American Activities, Mr. Justice Clark cited the importance of judicial branch independence and freedom from the strife of public controversy as reasons for his refusal to appear. He offered to consider responding to any written questions, subject only to his constitutional duties.

The Governor of South Carolina, James F. Byrnes, Secretary of State in 1946, refused to appear before the committee on Nov. 13, 1953, in response to a subpena. In a telegram to the chairman, Governor Byrnes stated that he could not by appearing admit the committee's right to command a Governor to leave his state and remain in Washington until granted leave to return. Such authority, he said, would enable the legislative branch to paralyze the administration of affairs of the sovereign states. He offered to respond to written questions and invited the committee or a subcommittee to meet with him at the State House in Columbia, S.C. The committee sent a subcommittee to South Carolina.

§ 4. Litigation to Enforce a Subpena; Senate Select Committee v Nixon

A review of recent litigation to enforce congressional subpenas may help reveal the issues involved in reconciling the congressional authority to seek information with the Chief Executive's claim of right to deny access to information in some circumstances.

The stage for a historic confrontation was set when the Senate Select Committee on Presidential Campaign Activities, created on Feb. 7, 1973, by unanimous approval of Senate Resolution 60,[19] with authority to investigate and study illegal, improper, or unethical activities in connection with the 1972 Presidential campaign and to issue subpenas,[20] discovered that

19. See § 1.46, supra, and 119 CONG. REC. 3830–51, 93d Cong. 1st Sess. for a discussion of this resolution.

20. Authority to issue subpenas, originally granted by S. Res. 60, was buttressed and clarified by S. Res. 194,

President Nixon had tape recorded conversations at the White House. After failing to obtain certain information by informal means, the select committee issued two subpenas duces tecum, one for tape recordings of five meetings between the President and White House Counsel John W. Dean III, and another for documents and materials relating to alleged criminal acts by a list of 25 persons. When the President failed to disclose the recordings and other materials, the select committee filed a civil action[1] for declaratory judgment, mandatory injunction, mandamus, and summary judgment in the District Court of the District of Columbia to enforce its subpenas and compel the President to transmit these materials to the select committee.[2]

In an order dated Oct. 17, 1973, the trial court dismissed the select committee's prayer for enforcement of its subpena after deciding only one of the several issues raised, that existing statutes did not grant jurisdiction to decide

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which expressed the sense of the Senate that issuance of a subpena to the President was authorized by S. Res. 60, and ratified that issuance. Furthermore, S. Res. 194 expressed the sense of the Senate that the select committee's initiation and pursuit of the lawsuit to compel disclosure of the subpenaed materials did not require prior approval of the Senate, and that in seeking this information which was of vital importance the select committee furthered a valid legislative purpose. See 119 CONG. REC. 36094, 36095, 93d Cong. 1st Sess., Nov. 7, 1973.

1. This case, captioned as Senate Select Committee on Presidential Campaign Activities, suing in its own name and in the name of the United States, et al. v Richard M. Nixon, individually and as President of the United States, was the subject of three judicial pronouncements discussed here, two in the District Court of the District of Columbia, an opinion entered by Chief Judge John J. Sirica and reported at 366 F Supp 51 (Oct. 17, 1973), and an order and memorandum entered by Judge Gerhard A. Gesell and reported at 370 F Supp 521 (Feb. 8, 1974); and one in the Court of Appeals for the District of Columbia Circuit, an opinion written by Chief Judge David L. Bazelon for the court sitting en banc and reported at 498 F2d 725 (May 23 1974).

2. In seeking these civil remedies, the select committee rejected as "unseemly and inappropriate" two traditional procedures to enforce subpenas, a contempt proceeding under 2 USC § 192 and common law powers permitting the Sergeant at Arms forcibly to secure attendance of a subpenaed person. See *Senate Select Committee on Presidential Campaign Activities, et al.* v *Nixon,* 366 F Supp 51, 54 (D.D.C., Oct. 17, 1973), John J. Sirica, Chief Judge.

such a controversy.[3] To remedy this inhibition, Congress, at the instance of the select committee, expressly conferred special jurisdiction on the District Court of the District of Columbia to consider civil actions brought by the select committee to enforce its subpenas.[4]

After rehearing the case and considering the contentions of the parties, the district court[5] made several findings: first, a controversy between two branches of government in which one sought information from the other was justiciable (appropriate for resolution by the courts) and was not, as suggested by the President's counsel, a nonjusticiable political question; second, that in a controversy of this kind, the court, after determining justiciability, had a "duty to weigh the public interest protected by the President's claim of privilege against the public interest that would be served by disclosure to the Committee in this particular instance";[6] third, that the select committee failed to demonstrate either a pressing need for the subpenaed tapes or that further public hearings concerning the tapes would serve the public interest; fourth, the President's claim that the public interest was best served by a blanket unreviewable claim of confidentiality over all communications was rejected; and fifth, that the pending criminal prosecutions had to be safeguarded from the prejudicial effect which might arise if the select committee subpenaed the materials. On the basis of these holdings, the court declined to issue an injunction directing the President to comply with the subpena requiring information about the 25 listed individuals, and instead directed the President to submit a particularized statement as to selected portions of the subpenaed tape recordings.

The President refused to submit such a statement and reasserted

3. *Senate Select Committee on Presidential Campaign Activities, et al.* v *Nixon,* 366 F Supp 51, 61 (D.D.C.) John J. Sirica Chief Judge.

4. This jurisdictional statute, Pub. L. No. 93–190 (Dec. 19, 1973), appears in Senate Select Committee on Presidential Campaign Activities, Presidential Campaign Activities of 1972, S. Res. 60, appendix to the hearings, 93d Cong. 2d Sess. (1974).

5. See *Senate Select Committee on Presidential Campaign Activities, et al.* v *Nixon,* 370 F Supp 521 (D.D.C., Feb. 8, 1974), Gerhard A. Gesell, District Judge.

6. 370 F Supp 521, 522 (D.D.C. 1974); the quoted language was taken from *Nixon* v *Sirica,* 487 F2d 700, 716–718 (D.C. Cir., 1973), the suit brought by the Special Prosecutor to obtain certain evidence from the President.

his generalized claim of privilege on the grounds of confidentiality and his duty to prevent the possibly prejudicial effects on criminal prosecutions which might result from disclosure of the materials to the select committee. The trial court dismissed the select committee's suit to compel disclosure of the tapes.(7)

The select committee did not contest the decision to quash the subpena for materials relating to the 25 named individuals, but appealed the dismissal of the action to compel disclosure of the tapes. The United States Court of Appeals for the District of Columbia Circuit applying the reasoning it had used in *Nixon* v *Sirica*,(8) in which the Special Prosecutor was granted access to certain Presidential tapes for use in grand jury investigations, rejected the select committee's argument that a district court, once it had determined that a generalized claim of privilege failed, lacked authority to balance public interests. The court of appeals also rejected the district court's rulings that the President's generalized claim of privilege failed and that the Chief Executive must submit subpenaed materials to the court accompanied by particularized claims to be weighed against the public interest.

Restating its belief expressed in *Nixon* v *Sirica*, that Presidential communications are "presumptively privileged,"(9) and that the privilege is analogous to the privilege "between a congressman and his aides under the speech and debate clause; to that among judges and their law clerks; and . . . to that contained in the fifth exemption to the Freedom of Information Act,"(10) the court held that, ". . . the presumption that the public interest favors confidentiality can be defeated only by a strong showing of need by another institution of government, a showing that the responsibilities of that institution cannot responsibly be fulfilled without access to records of the President's deliberations. . . ."(11) Such a showing "turns not on the nature of the Presidential conduct the subpenaed materials might reveal, but

7. 370 F Supp 521, 524 (D.D.C. 1974).

8. *Nixon* v *Sirica*, 487 F2d 700 (D.C. Cir. 1973) [hereinafter cited as *Nixon*].

9. *Senate Select Committee on Presidential Campaign Activities, et al.* v *Nixon*, 498 F2d 725, 730 (D.C. Cir. 1974) [hereinafter cited as Select Committee]; see also *Nixon*, at 705, 717, and 718.

10. Select Committee, at 729; see also *Nixon*, at 717.

11. Select Committee, at 730; see also *Nixon*, at 722.

rather on the nature and appropriateness of the function in the performance of which the material was sought and the degree to which the material was necessary to its fulfillment." (12)

The court applied these tests to the select committee's functions and asserted needs. The select committee maintained that it needed subpenaed materials to resolve conflicts in the voluminous testimony it had received so that it could responsibly exercise its duty to oversee activities and ascertain malfeasance in the executive department. Without denying the congressional role to exercise a general oversight power or defining the limits of that power, the court found that the select committee's oversight authority was subordinate to the constitutionally prescribed method of ascertaining malfeasance by executive officials, impeachment. Because the House Committee on the Judiciary had commenced an impeachment inquiry, the Select Committee's immediate need for the subpenaed materials was "merely cumulative" from a congressional perspective. The need for the subpenaed materials to fulfill its legislative responsibility, to determine whether Congress should enact laws to regulate political activities, also failed because the court believed that legislative judgments, unlike grand jury determinations of probable cause, depend more on predicted consequences of proposed legislative actions and their political acceptability than on precise reconstruction of past events.(13)

The court indicated that the President's obligation to respond to a subpena would not require him to submit particularized claims of privilege to the court to be weighed against the public interest in disclosure unless the select committee made a "showing of the order made by the grand jury" in *Nixon* v *Sirica*.(14) Applying this standard, the court concluded that the need demonstrated by the select committee in the circumstances of this case and in light of the impeachment investigation by the House Committee on the Judiciary, was "too attenuated and too tangential" to permit a judicial judgment that the President was required to comply with the committee's subpena.(15)

The court of appeals affirmed the order dismissing the select

12. Select Committee, at 731; see also *Nixon*, at 717, 718.

13. Select Committee, at 732.

14. Select Committee, at 729, 730; in *Nixon*, at 715, the Special Prosecutor was found to have made a "uniquely powerful showing" of need for subpenaed materials.

15. Select Committee, at 733.

committee's suit without prejudice, although on grounds different from those announced by the district court.[16]

A review of the Chief Executive's refusal to disclose information on the basis of privilege would not be complete without a discussion of certain aspects of the 8–0 Supreme Court decision in *United States* v *Nixon*,[17] in which the President was ordered to respond to a subpena issued by the Special Prosecutor for tape recordings by submitting them to the district court for judicial inspection. Because the opinion expressly stated that the court was "not here concerned with the balance . . . between the confidentiality interest of the executive and congressional demands for information,"[18] its holding would not control a future suit brought to enforce a congressional subpena. Nonetheless, an analysis of the court's reasoning and approach demonstrates the limits and foundation of executive privilege, factors which would be involved in such an action. Reaffirming that "it is emphatically the province and duty of the Supreme Court to 'say what the law is'",[19] the court rejected the President's claim of absolute discretion exclusively to determine what information may be withheld under the shield of executive privilege. However, in one of the most significant holdings of the opinion, the court at three points alluded to a constitutional foundation for a claim of executive privilege based on confidentiality of Presidential communications:

> Whatever the nature of the privilege of confidentiality of presidential communications in the exercise of Art. III powers the privilege can be said to derive from the supremacy of each branch within its own assigned area of constitutional duties. Certain powers and privileges flow from the nature of enumerated powers;[20] the protection

16. *Id.*

17. 418 U.S. 683 (1974) [hereinafter cited as *U.S.* v *Nixon*]; Mr. Justice Rehnquist took no part in the consideration or decision of this case. See Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 92–82, 92 Cong. 2d Sess., 1975 Supplement, p. S 20–22, for a discussion of this decision.

18. *U.S.* v *Nixon,* at 712 n. 19.

19. *U.S.* v *Nixon,* at 705; the internal quotes were taken from *Marbury* v *Madison,* 1 Cranch 137 (1803).

20. In a footnote at this point the court dealt with the Special Prosecutor's contention that no constitutional provision authorized the Executive to assert privilege by stating that silence of the Constitution is not dispositive. To support this position, the following passage from *Marshall* v *Gordon,* 243 U.S. 521, 537 (1937), was cited: "The rule of constitutional

of the confidentiality of presidential communications has similar constitutional underpinnings.(1)

A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for presidential communications. The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution.(2)

Nowhere in the Constitution, as we have noted earlier, is there any explicit reference to a privilege of confidentiality, yet to the extent this interest relates to the effective discharge of a President's powers, it is constitutionally based.(3)

The court's willingness to balance competing interests depends on the nature of the claim of executive privilege. Although it found that a generalized claim of privilege based on confidentiality must yield to a need of the Special Prosecutor to obtain information for use in a pending criminal trial, the court indicated that it would not be as willing to balance interests or reject a claim of executive privilege based on the President's need to protect military, diplomatic or sensitive national security secrets. "As to these areas of Art. II duties the courts have traditionally shown the utmost deference to presidential responsibilities." (4)

Another factor in the authority of courts to review claims of executive privilege is the nature of the asserted need for information. Because claims of executive privilege either on grounds of confidentiality or diplomatic, military, or national security secrets are constitutionally based, the claim of need based on the Constitution is more likely to be reviewed than

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interpretation announced in *McCulloch* v *Maryland,* 4 Wheat. 316, that that which was reasonably appropriate and relevant to the exercise of a granted power was considered as accompanying the grant, has been so universally applied that it suffices merely to state it." See *U.S.* v *Nixon,* at 705, n. 16.

1. *U.S.* v *Nixon,* at 705, 706.

2. Here the Court cited *Carl Zeiss Stiftung* v *V.E.B.* Carl Zeiss, Jena, 40 F.R.D. 318, 325 (DDC 1966), [aff'd. 384 F2d 979, cert. denied 389 U.S. 952 (1967)]; *Nixon* v *Sirica,* 487 F2d 700, 713 (D.C. Cir. 1973); *Kaiser Aluminum and Chem. Corp.* v *U.S.,* 157 F Supp 939 (Ct. Cl. 1958); and The Federalist No. 64 (S.F. Mittel ed. 1938). *U.S.* v *Nixon,* at 708, n. 17.

3. *U.S.* v *Nixon,* at 711.

4. *U.S.* v *Nixon,* at 710; the court cited *C. & S. Air Lines* v *Waterman,* 333 U.S. 103, 111 (1948) and *U.S.* v *Reynolds,* 345 U.S. 1 (1952), two cases where the Supreme Court deferred to Presidential claims of secrecy in foreign policy and military affairs, respectively.

one which is not. The fact that the Special Prosecutor's claim of need for information needed in a pending criminal trial was based on the fifth amendment guarantee of due process of law and the sixth amendment right to be confronted with witnesses against him and have compulsory process (subpenas) for obtaining witnesses in his favor was accorded great weight by the court in balancing the need for evidence against the requirement of confidentiality. Linking these constitutional bases to the responsibilities of the judicial branch tipped the balance in favor of requiring the President to submit subpenaed materials for a judicial inspection.

> The impediment that an absolute, unqualified privilege would place in the way of the primary constitutional duty on the Judicial Branch to do justice in criminal prosecutions would plainly conflict with the function of the courts under Art. III. . . .
>
> To read the Art. II powers of the President as providing [such] privilege [on the basis merely of] a generalized claim of the public interest in confidentiality of nonmilitary and nondiplomatic discussions would upset the constitutional balance of "a workable government" and gravely impair the role of the courts under Art. III.(5)

Additional factors in the decision were the court's unwillingness to conclude that advisors would temper the candor of their remarks because of the possibility of occasional disclosure;(6) and its belief that a judge in chambers could protect the confidentiality of Presidential communications consistent with the fair administration of justice.(7)

§ 5. Legislation to Obtain Information

Some statutes require agencies to provide information to selected committees. An executive agency, on the request of the Committee on Government Operations of the House, or any seven members thereof, or on request of the Committee on Government Operations of the Senate, or any five members thereof, is required to submit any information requested of it relating to any matter within the jurisdiction of the committee.(8)

The Atomic Energy Commission is required to keep the Joint Committee on Atomic Energy fully and currently informed with respect to all commission activities.(9) The

5. *U.S.* v. *Nixon,* at 707.

6. *U.S.* v. *Nixon,* at 712.

7. *U.S.* v. *Nixon,* at 714.

8. 5 USC § 2954; Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 413.

9. 42 USC § 2252; Aug. 1, 1946, c. 724, § 202, as added Aug. 30, 1954, c.

Department of Defense is required to keep the joint committee fully and currently informed with respect to all matters within the department relating to the development, utilization, or application of atomic energy. Any government agency is required to furnish any information requested by the joint committee with respect to the activities or responsibilities of that agency in the field of atomic energy.(10)

Other statutes encourage government personnel, as distinguished from departments and agencies to supply information to Congress. The right of federal employees, individually or collectively, to furnish information to either House of Congress or to a committee or member thereof, may not be interfered with or denied.(11) Upon the request of a congressional committee, joint committee, or member of such committee, an officer or employee of the Department of State, the U.S. Information Agency, the Agency for International Development, the U.S. Arms Control and Disarmament Agency, or any other department, agency, or independent establishment of the U.S. government primarily concerned with matters relating to foreign countries or multilateral organizations, may express views and opinions and make recommendations if the request of the committee or member of the committee relates to a subject within the jurisdiction of that committee.(12)

1073 §1, 68 Stat. 956, and amended Sept. 6, 1961, Pub. L. 87–206, §17, 75 Stat. 479; Mar. 26, 1964, Pub. L. 88–294, 78 Stat. 172. By Pub. L. 93–438, the AEC was abolished and its functions transferred to the Nuclear Regulatory Commission and the Energy Research and Development Administration. The jurisdiction of the joint committee was eliminated in the 95th Congress.

10. *Id.*

11. 5 USC §7102; Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523.

12. 2 USC §194a; Pub. L. 92–352, title V, §502, July 13, 1972, 86 Stat. 496, amended Pub. L. 93–126, §17, Oct. 18, 1973, 87 Stat. 455.

Concurrent Resolution

§5.1 The Senate approved a concurrent resolution to establish a procedure assuring Congress the full and prompt production of information requested from federal officers and employees but the procedures therein never became effective since not approved by the House.

On Dec. 18, 1973,[13] the Senate by voice vote approved Senate Concurrent Resolution 30:

Whereas the withholding from either House of Congress, or from the committees of Congress and subcommittees thereof by officers or employees of the United States of any information, including testimony, records, or documents, or other material requested by the Congress in order to enable it to exercise a legislative function under the Constitution erodes the system of checks and balances prescribed by the Constitution, unless such withholding is justified by the President to the Congress and, if necessary, determined by the Judiciary to be proper: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), (a) That, when an officer or employee of the United States is summoned to testify or to produce information, records, documents, or other material before either House of Congress or a committee of the Congress or subcommittee thereof, that officer or employee shall appear at the time and place specified and shall answer all questions propounded to him, or produce all information, including records, documents, and other material sought, unless, in the case of an officer or employee of a Federal agency in the executive branch, either within twenty days of the date of the summons, or, in the case of any such information which was first requested at an appearance, within ten days after that appearance, the President formally and expressly instructs the officer or employee in writing to withhold the information requested, including answers to specific questions, or specific records, documents, or other material, in which event such Presidential instruction shall set forth the grounds on which it is based.

(b) Each written Presidential instruction pursuant to subsection (a) shall be transmitted to the House of Congress or committee of the Congress or subcommittee thereof requesting the information, proposing the questions, or seeking the records, documents, or other material.

Sec. 2. (a) If a House of Congress or a committee of Congress—

(1) determines that an officer or employee of the United States has failed to comply with the provisions of section 1(a); or

(2) upon consideration of the Presidential instruction transmitted pursuant to section 1(b), determines that the information requested is needed to enable it to exercise a legislative function under the Constitution, it shall prepare a written report setting forth such determination. In the case of a committee, the chairman is authorized, subject to the approval of the committee, to issue a subpena requiring such officer or employee to appear before the committee at a time specified and to provide the information requested by answering the question or questions propounded and to produce any information, including records, documents, or other material requested. In the case of a House of Congress, the majority or minority leader shall introduce a resolution citing such determination and authorizing the ma-

13. 119 CONG. REC. 42105, 42106, 93d Cong. 1st Sess., see also S. REPT. NO. 93–613.

jority or minority leader of that House to issue a subpena requiring such officer or employee to appear before such House and to provide the information requested by answering the question or questions propounded and to produce any information, including records, documents, or other material requested.

(b) If a committee of the Congress, or the majority or minority leader of a House of Congress determines that an officer or employee of the United States has failed to comply with a subpena issued pursuant to subsection (a) within fifteen days after such officer or employee receives such subpena, the chairman of such committee or the majority or minority leader of such House shall file—

(1) in the case of a House of Congress, a resolution with such House;

(2) in the case of a joint committee, a concurrent resolution with both Houses of Congress; and

(3) in the case of a committee, a resolution with its House of Congress; with a report and record of the proceedings relating to such subpena. Congress, in the case of any such concurrent resolution, and the House of Congress with which any such resolution is filed, shall take such action as it deems proper with respect to the disposition of such concurrent resolution or resolution.

(c)(1) A resolution introduced pursuant to subsections (a) or (b) shall not be referred to a committee and shall be privileged business for immediate consideration. It shall at any time be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. Such motion shall be highly privileged and not debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) If the motion to proceed to the consideration of the resolution is agreed to, debate thereon shall be limited to two hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order, and it shall not be in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(3) Motions to postpone, made with respect to the consideration of the resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to the resolution shall be decided without debate.

Sec. 3. (a) Each House of Congress and each committee or subcommittee of the Congress shall take appropriate measures to insure the confidentiality of any information made available to it which, in the judgment of the Federal agency providing it and the House of Congress or committee or subcommittee of the Congress receiving it, requires protection against disclosure which would endanger (1) personal privacy, (2) trade secrets or confidential commercial or financial information, or

(3) the conduct of the national defense, foreign policy, or law enforcement activities.

(b) The Select Committee on Standards and Conduct of the Senate shall investigate any breach of confidentiality of information made available under this part by a Member or employee of the Senate, and the Committee on Standards of Official Conduct of the House of Representatives shall investigate any breach of confidentiality of information made available under this part by a Member or employee of the House of Representatives. Such committee shall recommend appropriate action such as censure or removal from office or position.

Sec. 4. For purposes of this resolution:

(1) The term "committee of the Congress" means any joint committee of the Congress or any standing committee, special committee, or select committee of either House of Congress.

(2) The term "Federal agency" has the same meaning given that term under section 207 of the Legislative Reorganization Act of 1970 and includes the Executive Office of the President.

Sec. 5. (a) Nothing in this resolution shall be construed to require the furnishing or production of any information, records, documents, or other material to either House of Congress if such furnishing or production is prohibited by an Act of Congress.

(b) Nothing in this resolution shall be construed as in any way impairing the effectiveness or availability of any other procedure whereby Congress may obtain information needed to enable it to exercise a legislative function under the Constitution.

The final disposition of this resolution (S. Con. Res. 30) in the House was referral to the Committee on Rules by the Speaker.

Bill

§ 5.2 The Senate approved a bill, not acted upon by the House, known as the Congressional Right to Information Act to establish a procedure assuring full and complete disclosure of information requested from federal officers and employees.

On Dec. 18, 1973,(14) the Senate approved S. 2432:(15)

That this Act may be cited as the "Congressional Right to Information Act".

Sec. 2. (a) Title III of the Legislative Reorganization Act of 1970 is amended by adding at the end thereof the following new part:

PART 4—KEEPING THE CONGRESS INFORMED

INFORMING CONGRESSIONAL COMMITTEES

Sec. 341. (a) The head of every Federal agency shall keep each committee of the Congress and the subcommittees thereof fully and cur-

14. 119 CONG. REC. 42101–05, 93d Cong. 1st Sess.

15. See S. Rept. No. 93–612 for the report on the bill.

rently informed with respect to all matters relating to that agency which are within the jurisdiction of such committee or subcommittee.

(b) The head of a Federal agency, on request of a committee of the Congress or a subcommittee thereof or on request of two-fifths of the members thereof, shall submit any information requested of such agency head relating to any matter within the jurisdiction of the committee or subcommittee.

PRODUCTION OF INFORMATION

Sec. 342. (a) When an officer or employee of the United States is summoned to testify or to produce information, records, documents, or other material before either House of Congress or a committee of the Congress or subcommittee thereof, that officer or employee shall appear at the time and place specified and shall answer all questions propounded to him, or produce all information, including records, documents, and other material sought, unless, in the case of an officer or employee of a Federal agency in the executive branch, either within twenty days of the date of the summons, or, in the case of any such information which was first requested at an appearance, within ten days after that appearance, the President formally and expressly instructs the officer or employee in writing to withhold the information requested, including answers to specific questions, or specific records, documents, or other material, in which event such Presidential instruction shall set forth the grounds on which it is based.

(b) Each written Presidential instruction pursuant to subsection (a) shall be transmitted to the House of Congress or committee of the Congress or subcommittee thereof requesting the information, proposing the questions, or seeking the records, documents, or other material.

SUBPENA OF INFORMATION

Sec. 343. (a) If a House of Congress or a committee of Congress—

(1) determines that an officer or employee of the United States has failed to comply with the provisions of section 342(a); or

(2) upon consideration of the Presidential instruction transmitted pursuant to section 342 (b), determines that the information requested is needed to enable it to exercise a legislative function under the Constitution it shall prepare a written report setting forth such determination. In the case of a committee, the chairman is authorized, subject to the approval of the committee, to issue a subpena requiring such officer or employee to appear before the committee at a time specified and to provide the information requested by answering the question or questions propounded and to produce any information, including records, documents, or other material requested. In the case of a House of Congress, the majority leader shall introduce a resolution citing such determination and authorizing the majority leader of that House to issue a subpena requiring such officer or employee to appear before such House and to provide the information requested by answering the question or questions propounded and to produce any information, including records, documents, or other material requested.

(b)(1) If a committee of the Congress determines that an officer or employee of the United States has failed to comply with a subpena issued pursuant to subsection (a) within fifteen days after such officer or employee receives such subpena, the chairman of such committee is authorized, subject to the provisions of paragraph (2), to bring a civil action in the United States District Court for the District of Columbia to enforce such subpena.

(2) If a committee of the Congress referred to in paragraph (1) deter-

mines that the chairman of such committee should institute a civil action in the United States District Court for the District of Columbia to enforce the subpena issued by it pursuant to subsection (a), the chairman shall introduce a resolution in the House or Houses of Congress concerned citing the failure to comply with the subpena of the committee and authorizing the chairman to bring a civil action in such purpose. If such resolution is agreed to by the House or Houses of Congress concerned, the chairman shall institute a civil action in the United States Court for the District of Columbia to enforce the subpena.

(c) If a House of Congress determines that an officer or employee of the United States has failed to comply with a subpena issued pursuant to subsection (a) within fifteen days after such officer or employee receives such subpena, the majority or minority leader of that House shall introduce a resolution citing such failure to comply and authorizing the majority or minority leader of that House to bring a civil action in the United States District Court for the District of Columbia to enforce such subpena.

(d)(1) A resolution introduced pursuant to subsections (a), (b) (2), or (c) shall not be referred to a committee and shall be privileged business for immediate consideration. It shall at any time be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. Such motion shall be highly privileged and not debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) If the motion to proceed to the consideration of the resolution is agreed to, debate thereon shall be limited to two hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order, and it shall not be in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(3) Motions to postpone, made with respect to the consideration of the resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to the resolution shall be decided without debate.

(e) The provisions of subsection (d) of this section are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively; and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

JUDICIAL REVIEW

Sec. 344. (a) The United States District Court for the District of Columbia shall have original jurisdiction of actions brought pursuant to section 343 of this Act without regard to the sum or value of the matter in controversy. The court shall have power to issue a mandatory injunction or other order as may be ap-

propriate, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the subpena issued pursuant to section 343 of this Act.

(b) Any congressional party commencing or prosecuting an action pursuant to this section may be represented in such action by such attorneys as it may designate.

(c) Appeal of the judgment and orders of the court in such actions shall be had in the same manner as actions brought against the United States under section 1346 of title 28, United States Code.

(d) The courts shall give precedence over all other civil actions to actions brought under this part.

PROTECTION OF INFORMATION

Sec. 345. (a) Each House of Congress and each committee or subcommittee of the Congress shall take appropriate measures to insure the confidentiality of any information made available to it under this part which, in the judgment of the Federal agency providing it and the House of Congress or committee or subcommittee of the Congress receiving it, requires protection against disclosure which would endanger (1) personal privacy, (2) trade secrets or confidential commercial or financial information, or (3) the conduct of the national defense, foreign policy, or law enforcement activities.

(b) The Select Committee on Standards and Conduct of the Senate shall investigate any breach of confidentiality of information made available under this part by a Member or employee of the Senate, and the Committee on Standards of Official Conduct of the House of Representatives shall investigate any breach of confidentiality of information made available under this part by a Member or employee of the House of Representatives. Such committee shall recommend appropriate action such as censure or removal from office or position.

DEFINITIONS

Sec. 346. For purposes of this part:

(1) The term "committee of the Congress" means any joint committee of the Congress or any standing committee, special committee, or select committee of either House of Congress.

(2) The term "Federal agency" has the same meaning given that term under section 207 of this Act, and includes the Executive Office of the President.

SAVINGS PROVISIONS

Sec. 347. (a) Nothing in this part shall be construed to require the furnishing or production of any information, records, documents, or other material to either House of Congress if such furnishing or production is prohibited by an Act of Congress.

(b) Nothing in this part shall be construed as in any way impairing the effectiveness or availability of any other procedure whereby Congress may obtain information needed to enable it to exercise a legislative function under the Constitution.

(b) Title III of the table of contents of the Legislative Reorganization Act of 1970 is amended by adding at the end thereof the following:

PART 4—KEEPING THE CONGRESS INFORMED

The final disposition of this measure (Senate Bill 2432) in the House was referral to the Committee on Rules by the Speaker.

Joint Resolution

§ 5.3 The House approved a joint resolution, not passed by the Senate, directing all executive departments and agencies of the federal government to make available to committees and subcommittees of the House and Senate information which may be deemed necessary to enable them properly to perform duties delegated to them by the Congress.

On May 13, 1948,[16] the House, after rejecting a motion to recommit on a roll call vote of 145 yeas to 217 nays, approved House Joint Resolution 342 by a roll call vote of 219 yeas to 142 nays. The text of the joint resolution follows:[17]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all executive departments and agencies of the Federal Government created by the Congress, and the Secretaries thereof, and all individuals acting under or by virtue of authority granted said departments and agencies, are, and each of them hereby is, authorized and directed to make available and to furnish to any and all of the standing, special, or select committees of the House of Representatives and the Senate, acting under the authority of any Federal statute, Senate or House resolution, joint or concurrent resolution, such information, books, records, and memoranda in the possession of or under the control of any of said departments, agencies, Secretaries, or individuals as may, by any of said committees, be deemed to be necessary to enable it to carry on the investigations, perform the duties, falling within its jurisdiction, when requested to do so: *Provided*, That said request shall be made only by a majority vote of all the members of the committee voting therefor at a formal meeting of the committee: *And provided further*, That if the committee be a committee created by the Senate, upon approval of the President or President pro tempore of the Senate: *And provided further*, That if the committee making such request be a committee created by or acting under the authority of the House of Representatives, upon approval of the Speaker or Acting Speaker of the House of Representatives, such major-

16. 94 CONG. REC. 5822, 80th Cong. 2d Sess.; debate on this joint resolution appears on pp. 5700–43 and 5807–22, on May 12 and 13, 1948, respectively. The report on this measure is H. REPT. NO. 1595.

17. This copy of the joint resolution is the final form which was sent to the Senate, read twice, and referred to the Committee on Expenditures in the Executive Departments. Referral to the committee was the final Senate disposition. The text that appears in the *Congressional Record* is not given here because it was amended several times.

ity vote of the committee to be shown by a certificate of the chairman of the committee, countersigned by the clerk; the approval of the President or President pro tempore of the Senate or the Speaker or Acting Speaker of the House of Representatives to be shown by letter over his signature. Any officer or employee in any such executive department or agency who fails or refuses to comply with a request of any committee of the Congress made in accordance with the foregoing provisions of this section shall, upon conviction thereof, be punished by a fine not exceeding $1,000 or by imprisonment for not exceeding 1 year, or both, at the discretion of the court.

Sec. 2. When, by virtue of section 1, any committee of the Congress shall have received information, books, records or memoranda from any of the departments, agencies, Secretaries, or individuals in pursuance of a request made under the authority of said section, it shall forthwith, by majority vote of the membership of said committee, determine what, if any, part of such information shall be made public and what part shall be deemed to be confidential, and it shall thereafter be unlawful for any member of said committee or any employee thereof to divulge or to make known in any manner whatever not provided by law to any person any part of the information so disclosed to said committee and which has by said committee been declared to be confidential; and any offense against the foregoing provision shall be a misdemeanor and shall be punished by fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and, if the offender be an employee of the United States, he shall be dismissed from office or discharged from employment.

Sec. 3. It shall be unlawful for any individual, while or after holding any office or employment under the United States Government, to appropriate or take custody of, for his own unofficial use or the unofficial use of any other person, any papers, documents, or records (other than those which are of a character strictly personal to him) to which he has or had access solely by reason of holding or having held such office or employment. Any individual who willfully violates this section shall, upon conviction thereof, be punished by a fine not exceeding $1,000, or by imprisonment for not exceeding one year, or both, at the discretion of the court.

Sec. 4. If any provision of this joint resolution, or the application of such provision to any person or circumstance, is held invalid, the remainder of the joint resolution, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Sec. 5. Nothing contained herein shall alter the procedure for inspection of tax returns by committees of Congress prescribed by section 55d of the Internal Revenue Code: *Provided*, That nothing herein contained shall alter any provision of law which expressly protects from disclosure specified categories of information obtained by executive departments and agencies.

Sec. 6. This joint resolution shall become effective on the tenth day after the date of its enactment.

This joint resolution was passed subsequent to President Truman's

refusal to permit the Secretary of Commerce to respond to a resolution of inquiry requesting a letter from the Director of the Federal Bureau of Investigation to the Secretary regarding the loyalty file on Dr. Edward U. Condon, Director of the National Bureau of Standards.[18]

C. PROCEDURE; HEARINGS

§ 6. Limitations on Authority to Investigate—Pertinence of Inquiry

Limitations on the authority to investigate are expressed in the Constitution and statutes, and judicial interpretation thereof, as well as in congressional and committee rules as interpreted and applied by presiding officers and the courts.

The authority of Congress to investigate has been interpreted to derive from article I, section 1, stating that, "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." Consequently, the authority to investigate is necessarily limited by the authority to legislate.[19]

A review of criminal contempt proceedings provides a comprehensive overview of limits of authority to investigate including legislative purpose,[20] pertinence of investigation thereto, procedural regularity of hearings,[1] and rights of witnesses.[2]

The statute which makes failure to testify a crime, 2 USC § 192, provides that the question must be "pertinent to the subject under inquiry." Pertinence is a matter of law[3] and does not depend upon

18. See § 2.20, supra, for a discussion of the resolution of inquiry.

19. See, for example, *Barenblatt* v *U.S.*, 360 U.S. 109, 111 (1959) in which Mr. Justice Harlan stated, "The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." See also Lovell, G. B., Scope of the Legislative Investigational Power and Redress for Its Abuse, 9 Hastings L. J. 276 (1957).

20. See § 1, supra, for a discussion of authority to investigate and legislative purpose.

1. See § 8, infra.

2. See §§ 9 through 14, infra.

3. *Braden* v *United States*, 365 U.S. 431 (1961); and *Sinclair* v *United States*, 279 U.S. 263 (1929).

the probative value of the evidence.[4] It means pertinent to the subject under inquiry, rather than pertinent to the person under interrogation,[5] and relates to the particular question asked, not to unasked possibilities.[6]

Because a legislative inquiry, unlike a judicial inquiry, must anticipate all possible cases which may arise rather than determine facts in a single case, the concept of pertinence in a congressional investigation is broader than that of relevance in the law of evidence.[7] The elements of pertinence are: (1) the material sought or answers requested must relate to a legislative purpose which Congress may constitutionally entertain, and (2) such material or answers must fall within the grant of authority actually made by Congress to the investigating committee. The question must be pertinent; if it is pertinent, an innocent true answer does not destroy such pertinence. Although the statute mentions pertinence only in relation to answers to questions, it applies equally to demands to produce papers.[8]

Because a witness at an investigative hearing exposes himself to criminal prosecution for contempt under 2 USO § 192 by refusing to answer questions, he is entitled to knowledge of the subject to which the interrogation is deemed pertinent with the same degree of explicitness that the due process clause requires in the expression of any element of a criminal offense.[9] An indictment which fails to identify the subject under inquiry at the time the witness was interrogated is fatally defective because the subject is central to prosecution under the statute.[10]

Rule XI clause 28(h)[11] imposes a duty on the chairman at an in-

4. *Sinclair* v *United States*, 279 U.S. 263 (1929). See 6 Cannon's Precedents §§ 336-338, for a discussion of this case.

5. *Rumely* v *United States*, 197 F2d 166, 177 (D. C. Cir. 1953); aff'd. 345 U.S. 41 (1953).

6. *Barsky* v *United States*, 167 F2d 241, 248 (D.C. Cir. 1948); cert. denied 334 U.S. 843 (1948).

7. *Townsend* v *United States*, 95 F2d 352 (D.C. Cir. 1938); cert. denied 30.3 U.S. 664 (1938).

8. *United States* v *Orman*, 207 F2d 148, 153, 154, 156 (3d Cir. 1953). See also, *Bowers* v *United States*, 202 F2d 447 (D.C. Cir. 1953) and Moreland, Allen B., Congressional Investigations and Private Persons, 40 So. Cal. L. Rev. 189, 236–239 (1967) for discussions of pertinence.

9. *Watkins* v *United States*, 354 U.S. 178, 209, 210 (1957).

10. *Russell* v *United States*, 369 U.S. 749, 764 (1962).

11. *House Rules and Manual* § 735(i) (1973). See § 13.4, infra, for a discussion of approval of this rule.

vestigative hearing to announce the subject of the investigation in an opening statement. When a witness refuses to answer a question on the ground of pertinence, the committee must repeat the "question under investigation" and show specifically where the question is pertinent thereto.(12)

To ascertain the subject under inquiry, the court in deciding the validity of a challenge to pertinence may look at (1) the authorizing resolution, (2) the remarks of the chairman and other members, (3) the nature of the proceedings, (4) the action of the committee by which a subcommittee investigation was authorized, and (5) the chairman's response to the witness, refusal to answer.(13) A court may also consider the historical usage of a particular procedure or inquiry:

> Just as legislation is often given meaning by the gloss of legislative reports, administrative interpretation, and long usage, so the proper meaning of an authorization to a congressional committee is not to be derived alone from its abstract terms unrelated to the definite content furnished them by the course of congressional actions.(14)

§ 7. —Intent of Witness

A witness cannot be convicted for refusal to testify or produce documents unless his refusal is willful,(15) that is, a deliberate and intentional act,(16) which need not, however, involve moral turpitude (17) or a bad or evil purpose or motive.(18)

Although a mistake of fact may in some cases justify a refusal to submit testimony or docu-

12. *Deutch* v *United States*, 367 U.S. 456 (1961); this case reversed a contempt conviction arising from an investigation of communist party activities "in the Albany area." The witness had refused to answer certain questions relating to his communist activities in Ithaca and at Cornell University, but, the court noted, such locations are 165 miles from Albany and thus were outside the scope of the committee's legitimate inquiry.

13. *Watkins* v *United States*, 354 U.S. 178, 212, 213 (1957).

14. *Barenblatt* v *United States*, 360 U.S. 109, 117 (1959). See also *Wilkinson* v. *United States*, 365 U.S. 399, 410 (1961).

15. 2 USC § 192; *Quinn* v *United States*, 349 U.S. 155, 165 (1955).

16. *United States* v *Bryan*, 339 U.S. 323 (1950).

17. *Braden* v *United States*, 365 U.S. 431 (1961).

18. *Wheeldin* v *United States*, 283 F2d 535 (9th Cir. 1960); cert. denied 366 U.S. 958 (1961); *Fields* v *United States*, 164 F2d 97, 100 (D.C. Cir. 1947). See Moreland, Allen B., Congressional Investigations and Private Persons, 40 So. Cal. L. Rev. 189, 239–242, for a discussion of willfulness.

ments,[19] a mistake of law, if deliberate and intentional, will not excuse such a refusal[20] even if based on advice of counsel.[1]

In determining whether orders from a superior would justify a refusal to comply with a subpena, or whether such refusal constitutes willful behavior, courts have distinguished between a "command to assume a position," which would shield the subordinate, and a mere ratification of a subordinate's "continuous position of noncompliance," which would not.[2] In such a case, the validity of a defense that a person acted on orders of a superior would depend on whether the superior's order preceded the subordinate's refusal or the converse.

The element of willfulness has been discussed in two contexts, refusal to produce papers and refusal to answer questions. The Supreme Court held in one case that the government established a prima facie case of willful noncompliance by introducing evidence that the witness had been validly served with a lawful subpena duces tecum to produce organizational records under her custody and control and that she had intentionally refused to present them on the appointed day.[3] In a later case, the court found that a subcommittee's reasonable basis for believing that a witness could produce certain records, coupled with evidence of his failure to suggest his inability to produce them, supported an inference that he could have produced them and shifted the burden to the witness to explain or justify his refusal.[4]

It has been further held that:

> . . . anything short of a clear-cut default on the part of the witness will not sustain a conviction for contempt of Congress. . . . The witness is not required to enter into a guessing game when called upon to appear before a committee. The burden is upon the presiding officer to make clear the directions of the committee, to consider any reasonable explanations given by the witness, and then rule on the witness' response.[5]

19. *Townsend* v *United States*, 95 F2d 352, 358 (D.C. Cir. 1938).

20. *Watkins* v *United States*, 354 U.S. 178, 208 (1957); *Townsend* v *United States*, 95 F2d 352, 358 (D.C. Cir. 1938).

1. *Sinclair* v *United States*, 279 U.S. 263, 299 (1929).

2. *United States* v *Tobin*, 195 F Supp 588, 615 (D.D.C. 1961); reversed on other grounds, 306 F2d 270 (D.C. Cir. 1962); cert. denied 371 U.S. 902 (1962).

3. *United States* v *Bryan*, 339 U.S. 323, 330 (1950).

4. *McPhaul* v *United States*, 364 U.S. 372, 379 (1960).

5. *United States* v *Kamp*, 102 F Supp 757, 759, 760 (D.D.C. 1952).

A court of appeals, adopting the above reasoning, established a procedure which requires a committee to propound a question, hear the refusal, rule that the refusal to answer is not satisfactory, and then, in time to allow an opportunity for answering, repeat the question to enable the witness either to purge himself and answer or stand on his original refusal to answer.[6] A contempt conviction, it has been said, cannot stand if a committee leaves a witness to speculate about the risk of possible prosecution and does not give him a clear choice between standing on his objection or complying with a committee ruling.[7] However, it has been further indicated that a conclusive presumption of intent to violate the statute might attach to a refusal even where that refusal was made without a statement at the time of the reason therefor.[8]

§ 8. —Procedural Regularity of Hearings

A committee's failure to observe House rules or its own committee rules has been held to constitute a ground to reverse convictions for contempt or perjury. Whether a committee has complied with such rules became easier to ascertain after the House, on Mar. 23, 1955, adopted the Code of Fair Procedures which established certain procedural rights for witnesses and provided that "the Rules of the House are the rules of its committees and subcommittees so far as applicable. . . ."[9]

As an example of the requirement of compliance with procedural rules, a witness' conviction under a District of Columbia statute[10] which defined perjury as making false statements before a competent tribunal was reversed by the Supreme Court because the government at trial did not adduce evidence showing that a quorum of a committee was present when the statements alleged to be false were made.[11]

6. *Quinn* v *United States,* 203 F2d 20, 33 (D.C. Cir. 1952), aff'd., 349 U.S. 155 (1955).

7. *Bart* v *United States, 349 U.S. 219, 223 (1955); Emspak* v *United States,* 349 U.S. 190, 202 (1955).

8. *Quinn* v *United States,* 203 F2d 20, 33 (D.C. Cir. 1952), aff'd., 349 U.S. 155 (1955).

9. The quotation is taken from Rule XI clause 27(a), *House Rules and Manual* § 735 (1973). See § 13.1, infra, for a discussion of adoption of the Code of Fair Procedures. See also § 15, infra, dealing with a related topic, the procedure for determining whether information may tend to defame, degrade, or incriminate a person.

10. 22 D.C.C. 2501 (Mar. 3, 1901).

11. *Christoffel* v *United States,* 338 U.S. 84 (1949).

But presence of a quorum of the committee at the time of the return of the subpena was held not to be necessary for conviction under the contempt statute, 2 USC § 192, for refusal to produce organizational records despite the fact that the witness could have demanded attendance of a quorum and refused to produce documents until a quorum appeared.(12)

A witness' objection or failure to object may affect the validity of an argument at trial. Although the witness' failure to object to the absence of a quorum was considered and did not waive his right to raise that objection at trial in *Christoffel* v *United States*,(13) the witness' failure to make the objection at the hearing when the situation could have been remedied was considered a reason to reject this contention at trial in *United States* v *Bryan*.(14)

In another contempt case, a court of appeals following *Bryan* held that a defendant who had been convicted of failure to answer questions before a congressional committee could not, on appeal, contend that a one-man subcommittee was not valid, inasmuch as he had failed to make the objection at the congressional hearing.(15)

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12. *United States* v *Bryan*, 339 U. S. 323 (1950).

13. See 338 U.S. 84, 88 (1949), for the statement of the majority that, "In a criminal case affecting the rights of one not a member, the occasion of trial is an appropriate one for petitioner to raise the question."

14. See 339 U.S. 323, 333 (1950) in which the majority stated:

"The defect in the composition of the committee, if any, was one which could easily have been remedied. But the committee was not informed until the trial, two years after the refusal to produce the records, that respondent sought to excuse her noncompliance on the ground that a quorum of the committee had not been present. . . . To deny the committee the opportunity to consider the objection or remedy it is in itself a contempt of its authority and an obstruction of its processes."

The different treatment of the same issue, timeliness of the objection, was explained by the majority as a consequence of the fact that the contempt statute considered in *Bryan*, 2 USC § 192, did not require a "competent tribunal" but the D.C. perjury statute reviewed in *Christoffel* did. This distinction was criticized by Mr. Justice Jackson who commented in a concurring opinion, ". . . I do not see how we can say that what was timely for Christoffel is too late for Bryan." (*Bryan*, at 344.)

See also, *United States* v *Fleischman*, 339 U.S. 349 (1950); reh. denied, 339 U.S. 991 (1950), for another contempt case which held that the witness had waived the objection.

15. *Emspak* v *United States*, 203 F2d 54 (D.C. Cir. 1952); reversed on other grounds, 349 U.S. 190 (1955).

A subcommittee's initiation of an investigation of Communist Party activities in labor, without obtaining authorization from a majority of the full committee as required by committee rule, was held in another case to constitute a ground to reverse a contempt conviction for refusal to answer questions.(16)

§ 9. Rights of Witnesses Under the Constitution—Fifth Amendment

In addition to meeting the requirements imposed by the contempt statute, discussed in preceding sections, congressional investigators must observe limits imposed by the Bill of Rights, particularly the first,(17) fourth,(18) and fifth amendments:

> The Bill of Rights is applicable to investigations as to all forms of governmental action. Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedoms of speech, press, religion, or political belief and association be abridged.(19)

The most extensive litigation has involved the fifth amendment. Availability of the privilege against self-incrimination in congressional investigations was established in 1879 when the House adopted a Judiciary Committee report stating that the fifth amendment provision, "No person . . . shall be compelled in any criminal case to be a witness against himself. . . ." could be invoked by a person in an investigation initiated with a view to impeach him, notwithstanding the fact that a congressional investigation is not a "criminal case." (20) Because the government

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Both the *Bryan* and *Emspak* cases predated Rule XI, clause 28(h), which provides that, "Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which shall be not less than two." *House Rules and Manual* § 735(h) (1973); this clause, numbered 27(h) at the commencement of the 93d Congress 1st Session, was numbered 28(h) at the end of that session. See § 13.3, infra, for a discussion of adoption of this rule.

16. *Gojack* v *United States,* 384 U.S. 702 (1966).

17. See § 10, infra.

18. See § 11, infra.

19. *Watkins* v *United States,* 354 U.S. 178, 188 (1957). See also Liacos, Rights of Witnesses before Congressional Committees, 33 B.U.L. Rev. 337 (1953).

20. See 3 Hinds' Precedents §§ 1699 and 2514, for discussions of the refusal of George C. Seward, former Counsel General at Shanghai, China, to testify or produce subpenaed materials. See also, Moreland, Allen B., Congressional Investigations and Private Persons, 40 So. Cal. L. Rev. 189,

could not challenge the availability of the fifth amendment, it generally focused on the character of the answers sought and adequacy of the claim of the privilege.[1]

Assertions of the fifth amendment privilege against self-incrimination have been raised in reply to questions relating to a witness' own membership or his knowledge of another person's membership in subversive organizations. Thus, the Supreme Court held that Communist Party activity might tend to incriminate a person for violation of the Smith Act and that it was not necessary to show that the answers sought would support a conviction of crime, but only that they would furnish a link in the chain of evidence needed to prosecute a witness for violation of conspiracy to violate that act.[2] Moreover, because the government could not constitutionally convict persons for refusing to testify about potentially incriminating facts, a district court dismissed contempt charges against 19 witnesses who had asserted the fifth amendment and refused to answer questions relating to Communist Party membership and activities at a Honolulu hearing of the Committee on Un-American Activities.[3]

An assertion of the privilege against self-incrimination does not have to take a particular form as long as the committee might reasonably be expected to understand it as an attempt to invoke the privilege.[4] Formulations held to be sufficient include: "the First Amendment to the Constitution, supplemented by the Fifth,"[5] "the First Amendment of the Con-

253–260 (1967); Constitution of the United States of America: Analysis and Interpretation, S. DOC. NO. 92–82, 92d Cong. 2d Sess., pp. 91, 92 (1972); and Fisk, J., Compulsory Testimony of the Congressional Witness and the Fifth Amendment, 15 Okla. L. Rev. 157 (1962), for discussions of the privilege against self-incrimination.

1. *Watkins* v *United States,* 354 U.S. 178, 196 (1957); see also *Quinn* v *United States,* 349 U.S. 155 (1955), *Emspak* v *United States,* 349 U.S. 190 (1955), *Bart* v *United States,* 349 U.S. 219 (1955), which were cited in *Watkins,* at 196.

2. *Blau* v *United States,* 340 U.S. 159 (1950).

3. Applicability of the privilege against self-incrimination to congressional hearings was recognized in *United States* v *Yukio Abe,* 95 F Supp 991 (D.C.Hawaii 1950) in an opinion entered one month prior to *Blau* v *United States.* The decision to dismiss the indictments was not reported.

4. *Quinn* v *United States,* 349 U.S. 155 (1955).

5. *Id.* at p. 164.

stitution supplemented by the Fifth Amendment,"[6] primarily the First Amendment, supplemented by the Fifth."[7]

Courts "indulge every reasonable presumption against waiver of fundamental constitutional rights" and refuse to interpret ambiguous statements as waivers of the privilege against self-incrimination.[8] A witness may waive the privilege by failing to assert it,[9] expressly disclaiming it,[10] or testifying on the same matters concerning which he later claims the privilege.[11] However, because the privilege attaches to a witness in each particular case in which he is called to testify, without reference to his declarations at some other time or place or in some other proceeding, it was held not to be waived when a witness verified allegations in prior litigation[12] or answered the same questions several years prior to committee interrogation when interviewed by an agent of the Federal Bureau of Investigation.[13]

Furthermore, a witness does not waive the privilege by giving answers which do not constitute an admission or proof of any crime.[14]

An insight into availability of the privilege may be gained by reviewing its purpose and permissible uses:

> Privilege . . . may not be used as a subterfuge.
>
> The privilege may only be asserted when there is reasonable apprehension on the part of the witness that his answers would furnish some evidence upon which he could be convicted of a criminal offense against the United States or which would lead to a prosecution of him for such offense, or

6. *United States* v *Fitzpatrick,* 96 F Supp 491, 493 (D.D.C. 1951).

7. *Emspak* v *United States,* 349 U.S. 190, 193, 197 (1955); this statement was held to be sufficient notwithstanding the fact that the witness, in response to the question, "Is it your feeling that to reveal your knowledge of them [certain individuals about whose communist activities the witness had been questioned] would subject you to criminal prosecution?" replied, "No, I don't think this Committee has a right to pry into my associations. That is my own position." *Emspak,* at 195, 196.

8. *Emspak* v *United States,* 349 U.S. 190 (1953).

9. *Id.*

10. *Hutcheson* v *United States,* 369 U.S. 599, 609 (1962).

11. *Rogers* v *United States,* 340 U.S. 367 (1951); *Presser* v *United States,* 238 F2d 233 (1960); cert. denied, 365 U.S. 316 (1960); rein. denied, 365 U.S. 858 (1960).

12. *Poretto* v *United States,* 196 F2d 392 (5th Cir. 1952).

13. *Marcello* v *United States,* 196 F2d 437 (5th Cir. 1952).

14. *United States* v *Costello,* 198 F2d 200, 202 (2d Cir. 1952).

which would reveal sources from which evidence could be obtained that would lead to such conviction or to prosecution therefor.

A witness is not bound to explain why answers to apparently innocent questions might tend to incriminate him when circumstances render such reasonable apprehension evident. Once it has become apparent that the answers to a question would expose a witness to the danger of conviction or prosecution, wider latitude is permitted the witness in refusing to answer other questions upon the ground that such answers would tend to incriminate him.[15]

Consequently, availability of the privilege is affected more by the context in which the question is asked and the underlying circumstances than by the nature of the question. In the application of this principle, a witness was not permitted to assert the privilege in response to questions relating to his place of residence and other preliminary data in the absence of a showing that elements of incrimination might attach to that information;[16] in another case, however, the privilege was held to be properly asserted in response to a question as to whether the witness knew any individuals who had been listed in an investigating committee's interim report which referred to such individuals as possibly involved in organized crime.[17]

Similarly, a witness was permitted to refuse to answer a question as to his employment record because the question was asked "in a setting of possible incrimination."[18] And a witness with a criminal record was said to have properly invoked the fifth amendment in response to all questions except his name and address before a Senate committee investigating crime.[19]

After testifying to an incriminating fact, a witness may not refuse to answer more questions on the same subject on the ground that such answers would further incriminate. Thus, after a witness testified that she had been treasurer of the Communist Party in Denver, she could not invoke the privilege against self-incrimination when asked the name of the person to whom she had given or-

15. *United States* v *Jaffee,* 98 F Supp 191 (D.D.C. 1951). See also, Moreland, Allen B., Congressional Investigations and Private Person, 40 So. Cal. L. Rev. 189, 258, 259 (1967) for a discussion of the scope of coverage of the privilege.

16. *Simpson* v *United States,* 241 F2d 222 (9th Cir. 1957).

17. *Aiuppa* v *United States,* 201 F2d 287 (6th Cir. 1952).

18. *Jakins* v *United States,* 231 F2d 405 (9th Cir. 1956).

19. *Marcello* v *United States,* 196 F2d 437 (5th Cir. 1952).

ganizational records. The majority of the Supreme Court reasoned that upholding a claim of privilege in such a case would invite distortion of facts by permitting the witness to select any stopping place in testimony.[20]

A witness who responded that he had complied to the best of his ability with a subpena and had made available all records he possessed at the time of service was held to have waived the privilege against self-incrimination; this waiver applied to a question relating to whether he had destroyed any of the subpenaed records since the time of service.[1]

A witness who admitted attending a meeting of the Communist Party but denied that he was a member was not permitted to invoke the privilege against self-incrimination in response to questions asking him to identify other persons present at that meeting.[2]

Under Part V of the Organized Crime Control Act of 1970,[3] any witness who refuses on the basis of his privilege against self-incrimination to testify or provide information may be granted immunity by court order based upon the affirmative vote either of a majority present before either House of Congress or two-thirds of the members of a full committee for a proceeding before a committee, subcommittee, or joint committee. Furthermore, the Attorney General must be served with notice of the intention to request the order 10 or more days prior to making it. When these conditions are met and a duly appointed member of the House or committee concerned makes the request, a U.S. district court shall issue the order requiring the witness to testify or provide the information. Issuance of the order may be deferred not longer than 20 days from the date of the request upon application of the Attorney General. The effect of such an order is to compel the witness to testify or provide the information by immunizing him from use in a criminal trial not only of tes-

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20. See *Rogers* v *United States*, 340 U.S. 367 (1951) which involved questioning before a grand jury.

1. *Presser* v *United States*, 384 F2d 233 (D.C. Cir. 1960), cert. denied, 365 U.S. 816 (1960); rein. denied, 365 U.S. 855 (1960).

2. *United States* v *Singer*, 139 F Supp 847 (D.D.C. 1956); aff'd. *Singer* v *United States*, 244 F2d 349 (D.C. Cir. 1957); rev'd. on other grounds on reh., 247 F2d 535 (1957).

3. 84 Stat. 926; 18 USC §§ 6002, 6005. The previous immunity statute, the Compulsory Testimony Act of 1954, codified at 18 USC § 3486 (1964), as amended, 18 USC § 3486 (1965), which applied to any investigation relating to national security or defense, was repealed. See also 6 Cannon's Precedents § 354, for a discussion of earlier cases on immunity.

timony or other information compelled under the order, but also any information directly or indirectly derived from such testimony or information.

A witness may intervene in a proceeding to grant immunity to contest the issuance of the order on the ground that the procedure prescribed by the statute has not been followed. Nonetheless, a witness may not challenge the committee's scope of inquiry, pertinence of questions propounded, or constitutionality of the statute, because the discretion of the district court in an immunity hearing does not encompass these issues.[4]

The present immunity statute[5] has been interpreted to require the court to make sure of compliance with established procedures, but does not authorize discretion to determine the advisability of granting immunity or impose conditions on such a grant.[6]

§ 10. —First Amendment

Claims involving freedom of association, belief, expression, and petition under the first amendment have sometimes been asserted in cases arising out of congressional investigations, though such claims are less frequent than those involving the privilege against self-incrimination.[7] The Supreme Court has recognized the applicability of the first amendment to investigations:

> Clearly an investigation is subject to the command that the Congress shall make no law abridging freedom of speech or press or assembly. While it is true that there is no statute to be reviewed, and that an investigation is not a law, nevertheless an investigation is part of lawmaking. It is justified solely as an adjunct to the legislative process. The First Amendment may be invoked against infringement of the protected freedoms by law or by rulemaking.[8]

4. *In re McElrath*, 248 F2d 612 (D.C Cir. 1957); this case arose under 18 USC § 3486, which has been repealed.

5. 18 USC § 6005.

6. Application of U.S. Senate Select Committee on Presidential Campaign Activities, 361 F Supp 1270 (D.C. 1973).

7. See, for example, Moreland, Allen B., Congressional Investigations and Private Persons, 40 So. Cal. L. Rev. 189, 260–265 (1967), and Bendich, A. M., First Amendment Standards for Congressional Investigations, 51 Calif. L. Rev. 267 (1963), for discussion of the First Amendment.

8. *Watkins* v *United States*, 354 U.S. 178, 197 (1957); see note 31, inserted at this point in the *Watkins* opinion, which listed other cases supporting this principle, including *United States* v *Rumely*, 345 U.S. 41, 43 (1953); *Lawson* v *United States* 176 F2d 49, 51, 52 (D.C. Cir. 1949); *Barsky* v *United States*, 167 F2d 241, 244–250 (D.C. Cir. 1948), cert. denied 334 U.S. 843 (1948); and *United*

In determining whether to accept a first amendment claim in a particular instance, courts balance the witness' right of privacy against the government's need to obtain the information:

> Accommodation of the congressional need for particular information with the individual and personal interest in privacy is an arduous and delicate task for any court. . . . It is manifest that despite the adverse effects which follow upon compelled disclosure of private matters, not all such inquiries are barred. . . . The critical element is the existence of, and the weight to be ascribed to, the interest of the Congress in demanding disclosures from an unwilling witness.[9]
>
> Undeniably, the First Amendment in some circumstances protects an individual from being compelled to disclose his associational relationships. However, the protections of the First Amendment, unlike a proper claim of the privilege against self-incrimination under the Fifth Amendment, do not afford a witness the right to resist inquiry in all circumstances. Where First Amendment rights are asserted to bar governmental interrogation, resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown.[10]

States v *Josephson*, 165 F2d 82, 90–92 (2d Cir. 1947), cert. denied 333 U.S. 858 (1948).

9. *Watkins* v *United States*, 354 U.S. 178, 198 (1957).

10. *Barenblatt* v *United States*, 360 U.S. 109, 126 (1959).

The decision to use a balancing test followed several developments in earlier cases. For example, courts refused to apply the "clear and present danger" rule, the traditional first amendment test, to congressional inquiries because such inquiries help determine the existence of a danger to national security and possible responses to such a danger;[11] not allowing Congress to investigate a potential danger until it had become "clear and present" would be "absurd" and impair the ability to respond.[12] Thus, for example, the power to inquire into whether a subpenaed witness was a member of the Communist Party or a believer in its principles received judicial approval.[13]

11. *United States* v *Josephson*, 165 F2d 82 (2d Cir. 1947), cert. denied 333 U.S. 858 (1948).

12. *Barsky* v *United States*, 167 F2d 241, 246, 247 (D.C. Cir. 1948), cert. denied 334 U.S. 843 (1948); reh. denied 339 U.S. 971, 972 (1950).

13. *Lawson* v *United States*, 176 F2d 49, 52 D.C. Cir. 1949).

In a later case, the right to petition and freedom of persons who had actively criticized the actions of the Committee on Un-American Activities were not deemed to have been infringed when the committee subpenaed them to testify about their activities in the Communist Party. *Braden* v *United States*, 365 U.S. 431 (1961); *Wilkinson* v *United States*, 365 U.S. 399 (1961).

The revision of the doctrine of presumption of legislative purpose and the recognition of the need for a lucid expression of authorization,[14] as well as imposition of the requirement that the delegation of power to investigate must be clearly revealed in the committee's authorizing resolution whenever first amendment rights are threatened, contributed to adoption of the balancing test.[15]

One formulation of the test to be applied by courts is the following, from a case which found an infringement of first amendment rights:

> [I]t is an essential prerequisite of the validity of an investigation which intrudes into the area of constitutionally protected rights of speech, press, association, and petition that the State convincingly show a substantial relation between the information sought and a subject of overruling and compelling state interest.[16]

But it should be remembered that one consequence of the balancing test is a general reluctance to interfere with pending congressional investigations on the ground that the witness may present first amendment claims before the committee or subcommittee, before the House or Senate, at trial, and on appeal.[17] Accordingly, courts will not interfere with legislative investigations unless the threat posed thereby to first amendment freedoms is sufficiently compelling and concrete, and the witness would be denied a remedy in the absence of such intervention.[18]

14. *United States* v *Rumely,* 345 U.S. 41 (1953).

15. *Watkins* v *United States,* 354 U.S. 178 (1937).

16. *Gibson* v *Florida Legislative Committee,* 372 U.S. 539, 546 (1963).

17. See, for example, *Sanders* v *McClellan,* 463 F2d 894 (D.C. Cir. 1972); *Ansara* v *Eastland,* 442 F2d 751 (D.C. Cir. 1971); *Shelton* v *United States,* 404 F2d 1292 (D.C. Cir. 1968) cert. denied 393 U.S. 1024 (1969) and *Pauling* v *Eastland,* 288 F2d 126 (D.C. Cir. 1960). But see *Stamler* v *Willis,* 415 F2d 1365 (7th Cir. 1969), cert. denied sub. nom. *Ichord* v *Stamler,* 399 U.S. 929 (1970), which held that witnesses against whom criminal charges for contempt were pending could, nonetheless, challenge alleged committee infringements on free expression in a civil action.

18. See, for example, *Pollard* v *Roberts,* 393 U.S. 14 (1968), per curiam affirmance of the three judge District Court for the Eastern District of Arkansas, 283 F Supp 248 (1968); *Gibson* v *Florida Legislative Committee,* 373 U.S. 539 (1963); *Louisiana ex rel. Germillion* v *NAACP,* 366 U.S. 293 (1961); *Bates* v *Little Rock,* 361 U.S. 516 (1960); *NAACP* v *Alabama,* 357 U.S. 449 (1958); *Sweezy* v *New Hampshire,* 354 U.S. 234 (1957), which involve infringements of the right of association by states; they

§ 11. —Fourth Amendment

The fourth amendment prohibition against unreasonable searches and seizures applies to congressional investigations.[19] A court of appeals made an unequivocal statement to this effect:

> The Fourth Amendment exempts no branch of the federal government from the commandment that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." This constitutional guaranty applies with equal force to executive, legislative and judicial action. Courts and committees rightly require answers to questions. But neither may exert this power to extort assent in invasions of homes and to seizures of private papers. Assent so extorted is no substitute for lawful process.[20]

The Supreme Court in one case held that the counsel to a Senate subcommittee who allegedly conspired with state officials to seize property and records by unlawful means in violation of the fourth amendment was not entitled to immunity under the Speech or Debate Clause and would have to appear as a defendant in a civil action and, if found liable, pay damages. However, the chairman of the subcommittee who had also been named as a party defendant was entitled to the immunity.[1]

Lower courts have adjudicated the validity of subpenas issued by committees. For example, the Supreme Court of the District of Columbia held that a Senate subpena duces tecum requiring Western Union to supply all copies of all telegrams sent or received by a law firm for a 10-month period in 1935 exceeded any legitimate exercise of the subpena power.[2]

Similarly, a federal district court expressed its view of a subpena duces tecum which specified "the minute books, contracts, reports, documents, books of account, etc., either belonging to the relator or to the Railway Audit and Inspection Company, Inc., with which he was connected" in the following manner:

> [T]he subpena on its face, shows a mere fishing expedition into the private affairs of the relator and his company, not within the scope of the com-

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did not arise as contempt proceedings from congressional investigations.

19. *Watkins* v *United States,* 354 U.S. 178, 188 (1957). See also Moreland, Allen B., Congressional Investigations and Private Persons, 40 So. Cal. L. Rev. 189, 225–230 (1967).

20. *Nelson* v *United States,* 208 F2d 505 (D.C. Cir. 1953), cert. denied 346 U.S. 827 (1953).

1. *Dombrowski* v *Eastland,* 387 U.S. 82 (1967).

2. *Strawn* v *Western Union,* 3 USL Week 646 (SCDC, Mar. 11, 1936).

> mittee's investigation, and an encroachment upon defendant's rights under the Fourth Amendment. . . . The duces tecum part of the subpena is so lacking in specification and description, and so wide in its demands, that it is felt it could not have been ordered had the application for it been made to this court.[3]

Although courts refuse to enforce subpenas which they find to be overbroad, they refuse to limit a committee's use of information in its possession. After telegraph companies refused to comply with a Senate committee's subpena duces tecum directing them to produce all telegrams transmitted from their offices from Feb. 1 to Sept. 1 of 1935, representatives of the committee and the Federal Trade Commission examined these messages and made notes and copies. Conceding that a court could enjoin this "trespass" while it was being conducted, a court of appeals stated that it lacked authority to enjoin use of the material after the committee had gained possession.[4]

A subpena for documents held in a representative capacity need not be as specific as one for documents belonging to an individual. Thus, a subpena directing production of "All records, correspondence and memoranda of the Civil Rights Congress relating to: . . . (1) the organization of the group; (2) its affiliation with other organizations; and (3) all monies received or expended by it," did not constitute "unreasonable search and seizure."[5]

§ 12. —Sixth Amendment

Because the language of the sixth amendment stipulates its application "In all criminal prosecutions," the amendment does not apply directly to congressional investigations. Consequently, a witness is not entitled to confront or cross-examine witnesses.[6] But

3. *United States* v *Groves,* 18 F Supp 3 (W.D. Pa. 1937); because the case was decided on the point of failure to appear before the committee, the statement relating to the subpena was dictum.

4. *Hearst* v *Black,* 87 F2d 68, 71 (D.C. Cir. 1936).

5. *McPhaul* v *United States,* 364 U.S. 372, 381 (1960); compare *McPhaul* with *United States* v *Groves,* 18 F Supp 3 (W.D. Pa. 1937), note supra, which discusses a subpena for papers which belong to an individual.

6. *United States* v *Fort,* 443 F2d 670 (D.C. Cir. 1970), cert. denied, 403 U.S. 932 (1971). *Fort,* however, cites examples of granting a limited right of self-examination (p. 680 and n. 24). See also *Hannah* v *Larche,* 363 U.S. 420 (1960), in which the Supreme Court by analogy approved state legislative committee rules which denied the rights of confronta-

the rules of the House take cognizance of rights included in the sixth amendment, including right to counsel and compulsory process. Thus, a witness may be accompanied by his own counsel for the purpose of advising him of his constitutional rights.(7) Furthermore, if a committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, such person is entitled to request that additional witnesses be subpenaed.(8) Where the committee does not determine that evidence or testimony may defame, degrade, or incriminate any person, the chairman receives and the committee disposes of requests to subpena additional witnesses.(9)

Although sixth amendment procedural guarantees do not apply to investigative proceedings, they apply to the criminal proceedings brought as a result of them. A court of appeals reversed a contempt conviction on the ground that the question the witness refused to answer, whether he had been a "member of a Communist conspiracy," lacked the definiteness required by the sixth amendment provision, "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation. . . ."(10) A count of an indictment charging that a witness committed perjury before a congressional committee when he denied that he had ever been "a sympathizer or any other kind of promoter of Communism or Communist interests" was held void for vagueness under the sixth amendment.(11)

§ 13. Rights of Witnesses Under House Rules

In addition to constitutional provisions, certain rules of the House grant rights to witnesses at investigative hearings, or establish procedures for such hear-

tion and cross-examination, in that the court sustained the rules of the Commission on Civil Rights which did not grant these rights in fact-finding investigations.

7. Rule XI clause 28(k), *House Rules and Manual* § 735(k) (1973). See § 14, infra, for precedents dealing with the right to counsel.

8. Rule XI clause 28(m), *House Rules and Manual* § 735(m) (1973). See § 15, infra, for a discussion of the effect of derogatory information.

9. Rule XI clause 28(n), *House Rules and Manual* § 735(n) (1973). See § 13.6, infra, for a discussion of adoption of this rule.

10. *O'Connor* v *United States*, 240 F2d 404 (D.C. Cir. 1956).

11. *United States* v *Lattimore*, 215 F2d 847 (D.C. Cir. 1954).

ings.[12] A rule[13] permits witnesses to submit brief and pertinent sworn statements in writing for inclusion in the record in the discretion of the committee, which is the sole judge of the pertinency of testimony and evidence adduced at its hearing. Cases decided prior to adoption of this rule indicated that a committee's refusal to permit a witness to make a statement before he was sworn,[14] or read a prepared statement[15] or a detailed legal brief objecting to a committee's authority during a hearing,[16] did not excuse refusals to be sworn or answer questions.

Another rule[17] permits a witness to refuse to be exposed to media coverage during a hearing. Prior to adoption of this rule, it was held that hearings conducted before media were not rendered invalid by the absence of a House rule on the subject, nor by the absence of rulings of the Speaker in that Congress; it was further said that rulings by Speakers in earlier Congresses prohibiting media coverage were not applicable.[18] Courts also held that the presence of microphones and cameras did not constitute such a lack of proper decorum as to render the committee an incompetent tribunal and eliminate the "competent tribunal" element of the crime of perjury.[19]

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12. See §§ 13.1 to 13.11, infra. See also, Heuble, Edward, Congressional Resistance to Reform: The House Adopts a Code for Investigating Committees, 1 Midwest J. of Poll. Sci. 313 (Nov. 1957).

13. Rule XI clause 28 (p), *House Rules and Manual* § 735(p) (1973). See § 13.10, infra, for a discussion of adoption of this rule.

14. *Eisler* v *United States*, 170 F2d 273 (D.C. Cir. 1948); cert. dismissed, 338 U.S. 883 (1948).

15. *Townsend* v *United States*, 95 F2d 352, 360 (D.C. Cir. 1938), cert. denied, 303 U.S. 664 (1938).

16. *Barenblatt* v *United States*, 240 F2d 875 (D.C. Cir. 1957); vacated and remanded, 354 U.S. 930 (1957); aff'd., 252 F2d 129 (D.C. Cir. 1958); aff'd., 360 U.S. 109 (1959).

17. Rule XI clause 33(f)(2), *House Rules and Manual* § 739b (1973). See § 13.11, infra, for a discussion of adoption of this rule.

18. *Hartman* v *United States*, 290 F2d 460 (9th Cir. 1961); reversed on other grounds, 370 U.S. 724 (1962).

District courts reached conflicting holdings on the duty of a witness to answer questions at a televised hearing. Compare *United States* v *Kleinman*, 107 F Supp 407 (D.D.C. 1952), which held that a witness was justified in refusing to testify before the media, with *United States* v *Hintz*, 193 F Supp 325 (N.D. Ill. 1952) which held that the witness was not excused for that reason. Both of these decisions predated Rule XI clause 33(f) (2).

19. *United States* v *Moran*, 194 F2d 623 (2d Cir. 1952), cert. denied, 343 U.S. 965 (1952).

Adoption of Code of Fair Procedures, Generally

§ 13.1 The House adopted the Code of Fair Procedures, establishing procedural rights for witnesses at investigative hearings.

On Mar. 23, 1955,[1] the House by voice vote approved House Resolution 151, known as the Code of Fair Procedures, granting certain procedural rights to witnesses at investigative hearings.

AMENDING THE RULES OF THE HOUSE OF REPRESENTATIVES

MR. [HOWARD W.] SMITH of Virginia: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 151 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That rule XI 25 (a) of the Rules of the House of Representatives is amended to read:

"25. (a) The Rules of the House are the rules of its committees so far as possible, except that a motion to recess from day to day is a motion of high privilege in committees. Committees may adopt additional rules not inconsistent therewith."

Sec. 2. Rule XI (25) is further amended by adding at the end thereof:

"(h) Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which shall be not less than two.[2]

"(i) The chairman at an investigative hearing shall announce in an opening statement the subject of the investigation.[3]

"(j) A copy of the committee rules, if any, and paragraph 25 of Rule XI of the House of Representatives shall be made available to the witness.[4]

"(k) Witnesses may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.[5]

"(l) The chairman may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.[6]

"(m) If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—

"(1) receive such evidence or testimony in executive session;

"(2) afford such person an opportunity voluntarily to appear as a witness; and

"(3) receive and dispose of requests from such person to subpena additional witnesses.[7]

"(n) Except as provided in paragraph (m), the chairman shall receive and the committee shall dis-

1. 101 CONG. REC. 3569, 3585, 84th Cong. 1st Sess.

2. This provision is discussed at § 13.3, infra.

3. This provision is discussed at § 13.4, infra.

4. This provision is discussed at § 13.7, infra.

5. This provision is discussed at § 14.1, infra.

6. This provision is discussed at § 13.5, infra.

7. This provision is discussed at § 15.1, infra.

pose of requests to subpena additional witnesses.

"(o) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee.[8]

"(p) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinency of testimony and evidence adduced at its hearing.[9]

"(q) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the committee." [10]

MR. SMITH of Virginia: Mr. Speaker, I yield 30 minutes to the gentleman from Ohio [Mr. Brown].

Mr. Speaker, at this time I offer a committee amendment.

The Clerk read as follows:

Committee amendment offered by Mr. Smith of Virginia: On page 1, line 4, after the word "as", strike out the word "possible" and insert in lieu thereof "applicable."

The committee amendment was agreed to.

MR. SMITH of Virginia: Mr. Speaker, I offer another committee amendment.

The Clerk read as follows:

Committee amendment offered by Mr. Smith of Virginia: On page 2, line 7, after the word "witnesses", insert "at investigative hearings."

MR. SMITH of Virginia: Mr. Speaker, I think I should say a word in explanation of that amendment. The bill reads:

Witnesses may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

The real purpose of this bill has to do with investigative committees and not legislative committees. This amendment simply makes that clear, that it applies not to the legislative committees.

THE SPEAKER: [11] The question is on the committee amendment offered by the gentleman from Virginia [Mr. Smith].

The committee amendment was agreed to. . . .

MR. SMITH of Virginia: Mr. Speaker, I move the previous question on the resolution.

The Speaker: Without objection, the previous question is ordered

MR. [KENNETH B.] KEATING [of New York]: I object, Mr. Speaker.

THE SPEAKER: The question is on ordering the previous question.

The previous question was ordered.

THE SPEAKER: The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The debate that preceded the adoption of the measure included an explanation as to its background and purpose: [12]

8. This provision is discussed at § 13.9, infra.

9. This provision is discussed at § 13.10, infra.

10. This provision is discussed at § 13.8, infra.

11. Sam Rayburn (Tex.).

12. 101 CONG. REC. 3569–71, 84th Cong. 1st Sess.

MR. SMITH of Virginia: Mr. Speaker, this resolution is a resolution reported by the Committee on Rules as a general guide for committees in the conduct of their hearings. As you know, there has been a lot of publicity and there has been some criticism about the conduct of hearings, particularly in investigative committees. The purpose here is to lay down a general framework or guide for the use of all legislative committees and may be supplemented by those committees from time to time as the exigencies require, so long as they do not conflict with the general purposes of this. This resolution is intended to lay down the general groundwork that will, perhaps, avoid some of the criticism that has taken place in the past.

There are two items that I think I should call particular attention to. One is the proviso that no subcommittee shall consist of less than two members. In other words, that abolishes the custom of one-man subcommittees.

The other is that when a person is named in a committee hearing and his good reputation besmirched, he shall have a prompt opportunity to appear and refute the charges.

I think those are the main things in the bill, except the provision that any witness that is called by an investigative committee shall have the right to have counsel to advise him as to his constitutional rights. . . .

MR. [EDWIN E.] WILLIS [of Louisiana]: Mr. Speaker, a group of us collaborated with the gentleman from California [Mr. Doyle] in the preparation of House Resolution 151. I was a member of that group. During the course of its consideration I will be glad to try to answer pertinent questions as to the details of the resolution. For the moment, however, I think it would be well for me to discuss the background and the broad outline of the proposal.

The most important thing to keep in mind is that the resolution simply sets forth minimum standards of conduct, particularly with reference to investigative hearings. Thus the very first paragraph of the resolution provides, "Committees may adopt additional rules not inconsistent herewith." Some committees may want to spell out their rules in greater detail. As a matter of fact, the rules of the House Committee on Un-American Activities are broader than the resolution presently before the House for consideration, but the point is that this particular committee and the other committees which may presently spell out their rules in broader terms than provided in House Resolution 151 could change their rules. Here we are amending the rules of the House itself. Since the rules of the House are binding on its committees, the net result is that the minimum standards of conduct set forth in House Resolution 151 will have to be respected by the committees. In other words, committee rules can provide for more but not less than the requirements set forth in this resolution.

MR. [CLARENCE J.] BROWN of Ohio: . . . Now, if I may, I shall try to the best of my ability, to explain in a few very short sentences just what this resolution does. I think the primary object that is accomplished or will be accomplished by the adoption of this resolution is that it does fix definitely in the rules that you cannot have 1-man subcommittees and that any subcommittee

taking evidence officially must consist of at least 2 members. Now, it does leave with the legislative committees the power and the authority to expand the rules of the House; in other words, under the present arrangement, each legislative committee, investigative committee, or special committee, is bound by the rules of the House and must follow the rules of the House. But, in addition, the committees now have the right and the authority to adopt additional rules for their own conduct if they so desire. In some instances we have had, more in another legislative body than in this one, subcommittees made up of only one person conducting the hearings. So, this resolution states very plainly in section 2 that each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which shall be not less than two.

In other words, the House under its general rules, by the adoption of this resolution, will say that you can fix any number of members on a committee or subcommittee as a quorum, provided you do not go below two; there must be at least two there, and that meets, as the gentleman who just preceded me explained, some of the legal questions that have arisen as the result of the cases taken to the Supreme Court. It cures that.

Criticism of Code of Fair Procedures

§ 13.2 The Code of Fair Procedures was criticized in debate at the time of its adoption.

On Mar. 23, 1955,[13] the Code of Fair Procedures was criticized as not providing sufficient safeguards to witnesses by Mr. Hugh D. Scott, of Pennsylvania.

MR. SCOTT: . . . As has already been pretty generally admitted, the Doyle resolution does not do anything which was not already in the discretion of committee chairmen, that I can see, except as to the two-man quorum, and that is bad. . . .

The pitifully inadequate Doyle resolution is powerless to prevent any of the following abuses, all of which have been the subject of widespread criticism:

First. It would allow a committee to circulate "derogatory information" from its confidential files without notice to the individuals concerned and without giving him an opportunity to explain or deny the defamatory material.

Second. It would allow a committee to make public defamatory testimony given at an executive session without notice of hearing to the person defamed.

Third. It would allow a committee to issue a public report defaming individuals or groups without notice or hearing.

Fourth. It would allow a committee chairman to initiate an investigation, schedule hearings and subpena witnesses without consulting the full committee.

Fifth. It would allow a committee chairman or member publicly to defame a witness or a person under investigation.

13. 101 CONG. REC. 3573, 3574, 84th Cong. 1st Sess.

Sixth. It would not allow a person under investigation to cross-examine a witness accusing him at a public hearing.

Seventh. It would not entitle a witness to even 24 hours advance notice of a hearing at which his career or reputation would be at stake.

Eighth. It would not protect a witness from distraction, harassment, or nervousness caused by radio, TV, and motion picture coverage of hearing. This, however, is adequately taken care of for the present session by the ruling of the Speaker.(14)

Ninth. It contains no provision for enforcement of its prohibitions or for supervision of committee operations.

Tenth. Finally, and most important, it would not prevent the committee from sitting as a legislative court, trying guilt or innocence of individuals, or inquiring into matters wholly unrelated to any function or activity of the United States Government.

Alternate Codes of Fair Procedures were introduced by a Member (15) as House Resolution 447 of the 83d Congress and House Resolution 61 of the 84th Congress.(16)

14. On Feb. 25, 1952, Speaker Sam Rayburn (Tex.), in response to a parliamentary inquiry of the Minority Leader, Joseph W. Martin, Jr. (Mass.), stated, ". . . There is no authority, and as far as the Chair knows, there is no rule granting the privilege of television of the House of Representatives, and the Chair interprets that as applying to these committees and subcommittees, whether they sit in Washington, or elsewhere. . . ." See 98 CONG. REC. 1334, 1335, 82d Cong. 2d Sess., for this ruling and 98 CONG. REC. 1567–71, 82d Cong. 2d Sess., Feb. 27, 1952, for a discussion of this ruling by Members.

Quorum

§ 13.3 The House amended its rules to provide that, "Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which shall be not less than two."

On Mar. 23, 1955,(17) the House by voice vote approved House Res-

15. Hugh D. Scott, Jr. (Pa.), who in the 83d Congress chaired the subcommittee of the Committee on Rules which proposed a Code of Fair Procedures. A Republican, Mr. Scott was a majority member of the 83d Congress and a minority member of the 84th Congress. See also 101 CONG. REC. 218–21, 84th Cong. 1st Sess., Jan. 10, 1955, for Mr. Scott's comments on these resolutions.

16. The texts of these resolutions appear at 101 CONG. REC. 3574, 3575, 84th Cong. 1st Sess., Mar. 23, 1955. Final disposition was referral to the Committee on Rules. Mr. Scott also inserted an article from the Virginia Law Review entitled Rules for Congressional Committees: An Analysis of House Resolution 447, which he and Rufus King had written. This article, which includes a compilation of precedents, studies, statutes, and court opinions on investigations, appears at 101 CONG. REC. 3575–81, 84th Cong. 1st Sess., Mar. 23, 1955.

17. 101 CONG. REC. 3569, 3585, 84th Cong. 1st Sess.

olution 151, known as the Code of Fair Procedures. One provision of the Code relates to the minimum number of members who must attend an investigative hearing and the requisite number for a quorum at all committee meetings,[18] and provides that, "Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which shall be not less than two."

During the debate, Members discussed the reasons for and implications of this amendment.

Commenting on the effect of the amendment, Mr. Howard W. Smith, of Virginia, stated that this amendment "abolishes the custom of oneman subcommittees." [19]

Mr. Edwin E. Willis, of Louisiana, stated that this amendment was a response to the Supreme Court decision in *Christoffel* v *United States,* 338 U.S. 84 (1949), which reversed and remanded a conviction for perjury because the government had not proved that a quorum was present at the time the allegedly false testimony was given, as required by the District of Columbia statute defining perjury as giving false testimony under oath before a "competent tribunal."

Mr. Willis also observed: [20]

> I call to your particular attention the following hint the Supreme Court gave to Congress. In the course of the decision, the Court said:
>
> > It [the Congress] of course has the power [21] to define what tribunal is competent to exact testimony and the conditions that establish its competency to do so.
>
> Following that broad hint, the other body amended its rules to provide that at an investigative hearing testimony may be received by one member. Stated differently, the Senate rules now provide that a single member constitutes a quorum. . . .
>
> But while the other body amended its rules, we did not. Accordingly, one of the provisions of House Resolution 151 provides as follows:
>
> > Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which shall be not less than two.
>
> I repeat that it is necessary for us to adopt a rule along this line in order to meet the decision of the Supreme Court in the Christoffel case. And I submit that at an investigative hearing a quorum should be not less than two. Of course, even after the passage of

18. See House Rules and Manual § 735(h) (1973).

19. 101 CONG. REC. 3569, 84th Cong. 1st Sess.

20. 101 CONG. REC. 3571, 84th Cong. 1st Sess.

21. This "power" is the constitutional mandate, " Each House may determine the Rules of its Proceedings . . ." Art. I, § 5 clause 2.

this resolution, a particular committee may require a greater number to constitute a quorum, but under the minimum standards of conduct which this resolution imposes, the quorum in no event can be less than two.

I submit that this is a sensible rule, as are all others embodied in the resolution. I personally oppose a one-man hearing. I think fair play requires that not less than two members should be present. This conforms more closely to our notions of fair proceedings.

But there is another reason why I think at least two members should be present at all times for taking testimony and receiving evidence. Forget the honest and cooperative witnesses for the moment. They never cause trouble to anyone and, of course, all committees bend backward to protect them. I have in mind the usual witnesses who appear before investigative committees such as the Committee on Un-American Activities of which I have the honor and privilege to be a member. These witnesses are tough. They are resourceful. They are sharp and smart. There is nothing they like better than to precipitate an argument with the presiding member. Yes, they are cunning. They are offensive and sometimes they are downright insulting. The presiding member must be on his toes and he is required to make quick and delicate rulings. Two heads are better than one in situations of this kind.

And so I am opposed to a one-man hearing, not only for the protection of the witness but more importantly for the preservation of orderly proceedings and the dignity of the committee of Congress.. . .

The debate also included an exchange regarding applicability of this provision:[1]

MR. [H.R.] GROSS [of Iowa]: Under section 2, subsection (h) each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which shall be not less than two. Does this mean in the absence of the adoption of rules that every committee, or that a standing committee such as the Committee on the Post Office and Civil Service could proceed with only two members constituting a quorum?

MR. SMITH of Virginia: Yes; I think that any subcommittee constituted of two members is sufficient.

MR. GROSS: That is with reference to subcommittees, then rule 11 deals with subcommittees, is that correct?

MR. SMITH of Virginia: To what rule does the gentleman refer?

MR. GROSS: Rule 11 section 2 (25). Does it deal only with subcommittees?

MR. SMITH of Virginia: It deals with all committees. . .

MR. [ELIJAH L.] FORRESTER [of Georgia]: . . . Let me show you gentlemen how hard it is to try to make some sort of provisions on rules of this kind. Take this particular rule of the 2-man committee. We wanted to write into that bill, and it is the sense of those who drew up the bill that where there is a committee of two, they shall be nonpartisan-one shall be a Democrat and one shall be a Republican. If you put that into the bill, and of course, we would like to have the Congress ob-

1. 101 CONG. REC. 3570, 3573, 3582,84th Cong. 1st Sess.

serve that, but if you put it into the bill, suppose you are out in California with a 2-man committee and suppose one of the members absented himself or suppose he was sick. Of course, you can see that there they are out in California and they are completely stymied. We did not put it in the bill, but we do think that is a rule that ought to be observed.

MR. [KENNETH B.] KEATING [of New York]: Mr. Speaker, will the gentleman yield on that point?

MR. FORRESTER: I yield.

MR. KEATING: With reference to that very provision, is it not the intention of the framers of this resolution that this should apply only to investigative hearings, because, certainly, there are many informal hearings by legislative committees where they take evidence with only one person sitting. It would greatly impede the work of those committees if, in a legislative committee, they were to require, always and without exception, more than one person.

MR. FORRESTER: Of course, that is the answer to that. . . .

MR. KEATING: . . . Indeed, I am fearful that the drafters of this resolution have, in one particular, imposed precisely the kind of limitation toward which I expressed unalterable opposition a few moments ago. That is at lines 10 through 12, on page 1, in the provision which allows and requires each committee to fix a number of its members to constitute a quorum, which number shall not be less than 2. This would be an unreasonable handicap and would expose the workings of our committee to exactly the vulnerability which was capitalized upon in the Christoffel case to defeat an otherwise valid conviction.

The Senate rule on the same subject, adopted after that case to meet the problem, reads as follows:

> Each standing committee, and each subcommittee of any such committee, is authorized to fix a lesser number than one-third of its entire membership who shall constitute a quorum thereof for the purpose of taking sworn testimony.

You will note that in all cases, under the Senate rule, one-third of a committee or subcommittee, including 1 member of a 3-man subcommittee, shall be a quorum for the purpose of taking sworn testimony, and that each committee and subcommittee is expressly authorized to vest this authority in a lesser number if it so wishes. This rule properly protects the committee and vests rights in it without suggesting any crippling restrictions in the event that the committee or subcommittee finds itself dealing with a perjurer.

The difficulty pointed out in the Christoffel case was that one can only commit perjury before a competent tribunal and the court held that a congressional committee consisting of less than a quorum was not such a tribunal. Even the Senate's one-third rule might give rise to difficulties since it is usual during protracted hearings for individual members to enter and leave the hearing room so long as someone is present and presiding. So the Senate made it possible for its committees, in any case where perjury might be an issue, to authorize a single member to take the testimony and therefore to prevent any recurrence of the Christoffel result.

The provision in House Resolution 151 which I am discussing does just

the opposite; it leaves in doubt what a quorum for the purpose of taking testimony might be in case the committee or subcommittee happens to overlook the formality of prescribing one—and it requires, arbitrarily, at all times and in all cases, that testimony must be taken with at least two members present. I have served as chairman of one of these investigating committees, and I know from personal experience how very difficult it is to keep a multiple quorum in the hearing room and to try to reflect accurately in the record that more than one member is present at all times. We tried, for a while, to have the reporter indicate on the record something like "at this point Mr. So and So left the hearing room," "at this point Mr. So and So reentered the hearing room," and so forth. It just will not work. And if you did not do something like that in a subsequent perjury case long after the facts, the actual physical presence of at least two members would be open to challenge and a necessary subject of proof in court.

The momentary furor stirred up last year over the subject of so-called one-man committees never impressed me very much. If any abuses were actually attributable to this situation, they were the fault not so much of the one man who ran the hearings, but of the others who, for one reason or another, were not present. In at least 99 out of 100 cases where testimony is to be taken from friendly and cooperative witnesses, it would be a terrible burden and disadvantage to require more than one member attend to build a record of the same; in the 100th case, requiring the presence of two members would not make a great deal of difference anyway. I am strongly opposed to this provision, and, if afforded the opportunity I shall propose an amendment to delete it and offer a substitute.

In the alternative, if it is the sense of a majority that some protection should be accorded witnesses who are threatened with abuse at the hands of a single member conducting a hearing to take sworn testimony, I would favor the approach recommended by Mr. Scott's subcommittee last year, namely, that such testimony could be taken in all cases by a single member unless the witness himself demanded to be heard by two or more members. Since the whole thing is only for the witness' protection, it makes good sense to let him make the demand if he wishes, and to regard it as waived otherwise.

Announcement of Subject of Investigation

§ 13.4 The House amended the rules to provide that, "The chairman at an investigative hearing shall announce in an opening statement the subject of the investigation."

On Mar. 23, 1955,[2] the House by voice vote approved House Resolution 151, known as the Code of Fair Procedures, one provision of which requires a chairman to announce the subject of an investigation.[3]

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2. 101 CONG. REC. 3569, 3585, 84th Cong. 1st Sess.

3. See *House Rules and Manual* § 735(i) 1973).

During the debate questions about the effect of this amendment were raised:[4]

MR. [GEORGE] MEADER [of Michigan]: May I call the gentleman's attention to the first provision on page 2 relating to the statement by the chairman of the subject matter of the investigation. I would like to ask the gentleman three questions with respect to that provision: Does this deprive the committee of the power to determine the scope of its inquiry by requiring the chairman to state the subject of the investigation?

MR. [HOWARD W.] SMITH of Virginia: Not at all, no. All that requires is that a general statement shall be made of what a particular hearing is all about.

MR. MEADER: Second, under court decisions questions in a committee hearing must be pertinent to the inquiry. Would questions not relevant under the statement as made by the chairman but relevant under the committee's investigative jurisdiction have to be answered, or could the witness refuse to answer with impunity?

MR. SMITH of Virginia: No. The relevancy is determined by the resolution creating the special committee or the provision of the rules defining the jurisdiction of the standing committee.

MR. MEADER: A third question is, May the statement of the subject matter required to be made by the chairman be in broad terms or must it be detailed?

MR. SMITH of Virginia: Merely in broad terms, just a general statement of the subject matter of the inquiry. . . .

MR. [CLARENCE J.] BROWN of Ohio: . . . Then it goes further. Remember this deals almost primarily with investigative committees and the conduct of investigations by such committees. It says that the chairman of the committee at the beginning of an investigation shall announce in general terms in an open statement what the subject of the investigation is; in other words, you are looking into the stock market or you are looking into consumer prices or into the necessity for school construction or whatever it may be. It does not mean that you have to pinpoint every single question that you are going to ask, by any means. . . .

Criticism was made of the wording.[5]

MR. [KENNETH B.] KEATING [of New York]: In subdivision (i) at the top of page 2, where it says:

> The chairman at an investigative hearing shall announce in an opening statement the subject of the investigation.

My understanding is that the resolution authorizing any investigation covers the general subject, and it is the intention of that section to mean he shall announce the subject of the particular hearing which is then about to take place. If that is the understanding, I would think the substitution of the word "hearing" for "investigation" would be helpful.

MR. SMITH of Virginia: I think they mean the same thing. I believe you are correct in the statement you have made.

4. 101 CONG. REC. 3569, 3572, 84th Cong. 1st Sess.

5. 101 CONG. REC. 3570, 3582, 84th Cong. 1st Sess.

MR. KEATING: . . . On page 2, at line 3, the drafters of House Resolution 151 have seemingly chosen the wrong word. It is not important for the chairman to advise those present of the subject to which an investigation is being addressed. That is the subject specified in the committee's authorizing resolution and is known to everybody from the very outset. What is frequently helpful, and might well be required, is a statement of the subject matter of the particular hearing which is about to be commenced. A statement of the latter will advise the witness and his counsel of the specific grounds which the committee proposes to explore, and thus avoid surprise or misunderstanding with respect to the lines of questioning to which the witness is likely to be subjected.

Punishment of Breaches of Order

§ 13.5 The House amended its rules to provide that, "The chairman may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt."

On Mar. 23, 1955,[6] the House by voice vote approved House Resolution 151, known as the Code of Fair Procedures, one provision of which relates to the chairman's authority to punish breaches of order and decorum.[7]

During the debate on the resolution, the effect of this provision was discussed:[8]

MR. [CLARENCE J.] BROWN of Ohio: . . . Then it spells out into law again what I believe the chairman of the committee already has, the power to punish breaches of order and decorum and of professional ethics on the part of counsel, by censure and exclusion from the hearings.

That legalizes, and it does away with any doubt as to the right of a chairman, in a case like that of Henry Grunewald, which was mentioned a moment ago, to say, " You are violating the rules of this committee, you are out." And he will tell the witness to get another lawyer. And the committee may cite such an offender to the House for contempt. If a lawyer simply does not obey the orders of the chairman, if he creates a disturbance, if he refuses to leave, and the situation becomes serious such that the committee wants to recommend that he be cited by the House for contempt, then that may be done and it is up to the House to take action as it sees fit.

Parliamentarian's Note: Thus the right of witnesses at investigative hearings to be accompanied by their own counsel for advice concerning their constitu-

6. 101 CONG. REC. 3569, 3585, 84th Cong. 1st Sess.

7. See *House Rules and Manual* § 735(l) (1973).

8. 101 CONG. REC. 3572, 84th Cong. 1st Sess.

tional rights is conditioned upon that counsel's behavior being consistent with professional ethical standards, and a witness must select another counsel if counsel is barred from committee hearings by unethical behavior.

Subpenas

§ 13.6 The House amended the rules to provide that, "Except as provided in paragraph (m), the chairman shall receive and the committee shall dispose of requests to subpena additional witnesses."

On Mar. 23, 1955,[9] the House by voice vote approved House Resolution 151, known as the Code of Fair Procedures, one provision of which relates to receiving and disposing of requests to subpena additional witnesses.[10]

During the debate, the effect and wording of this provision were discussed:[11]

> MR. [KENNETH B.] KEATING [of New York]: In subsection (m), it provides that if the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, the committee shall receive and dispose of requests from such person to subpena additional witnesses.[12]
>
> In the next section, it provides that except as above provided, the chairman shall receive and the committee shall dispose of requests to subpena additional witnesses. There is a difference in the language used there. Could the gentleman point out the significance of that or the reason why the different language is used?
>
> MR. [HOWARD W.] SMITH of Virginia: It is a very slight difference. You will find that the clause you refer to (3), comes under subsection (m). That is one of the things that apply under subsection (m) where a person is defamed. Subsection (n) is one that does not pertain to that particular section relative to defamation.
>
> MR. KEATING: I realize that is the language of the resolution, but I wonder why the requests for the issuance of subpenas are differently dealt with. It seems to me that the same considerations should apply in each instance.
>
> MR. SMITH of Virginia: I do think they are substantially the same. . . .
>
> MR. [CLARENCE J.] BROWN of Ohio: . . . Then there is a general provision, not just when some person makes a defamatory statement, but generally and in regard to other matters, the chairman shall receive requests for subpenaing additional witnesses.

Committee Rules

§ 13.7 The House amended its rules to provide that, "A copy

9. 101 CONG. REC. 3569, 3585, 84th Cong. 1st Sess.

10. See *House Rules and Manual* § 735(n) (1973.)

11. 101 CONG. REC. 3570–72, 84th Cong.1st Sess.

12. See § 15.1, infra, for a discussion of subsection (m), relating to the effect of derogatory evidence.

of the committee rules, if any, and paragraph 25 of Rule XI of the House of Representatives shall be made available to the witness."

On Mar. 23, 1955,[13] the House by voice vote approved House Resolution 151, known as the Code of Fair Procedures, one provision of which relates to a witness' access to a copy of committee rules.[14]

During the debate this provision was discussed:[15]

> MR. [CLARENCE J.] BROWN of Ohio: . . . It also provides that a witness who is called before that committee, either by subpena or who comes voluntarily, is entitled to receive a copy of the committee rules, if he so desires. Certainly that is a fair provision.

Transcripts

§ 13.8 The House amended its rules to provide that, "Upon payment of the cost thereof, a witness may obtain a transcript copy of the testimony given at a public session, or, if given at an executive session, when authorized by the committee."

On Mar. 23, 1955,[16] the House by voice vote approved House Resolution 151, known as the Code of Fair Procedures, one provision of which relates to a witness' access to a transcript.[17]

During the debate on the measure, this provision was discussed:[18]

> MR. [CLARENCE J.] BROWN of Ohio: . . . Finally, the witness is given the right, upon payment of the cost thereof, to obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the committee.
>
> In other words, if he wants to know what he said, if he is being cited for contempt, he may get a copy of the transcript so that he may be prepared if he has to go to court.

Release of Secret Information

§ 13.9 The House amended the rules to provide that, "No evidence or testimony taken in executive session may be

13. 101 CONG. REC. 3569, 3585, 84th Cong. 1st Sess.

14. See *House Rules and Manual* § 735(j) (1973). On Jan. 22,1971, the language of this rule was slightly modified to, "A copy of the committee rules and this clause shall be made available to each witness." See H. Res. 5, adopted at 117 CONG. REC. 144, 92d Cong. 1st Sess.

15. 101 CONG. REC. 3572, 84th Cong. 1st Sess.

16. 101 CONG. REC. 3569, 3585, 84th Cong. 1st Sess.

17. See *House Rules and Manual* § 735(q) (1973).

18. 101 CONG. REC. 3572, 84th Cong. 1st Sess.

released or used in public sessions without the consent of the committee."

On Mar. 23, 1955,[19] the House by voice vote approved House Resolution 151, known as the Code of Fair Procedures, one provision of which relates to use of evidence or testimony received in executive session.[20]

During the debate on the measure, this amendment was discussed [1]

> MR. [CLARENCE J.] BROWN of Ohio: . . . It also provides that no evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee. That means, of course, a majority of the committee.[2]

Submission of Written Statements

§ 13.10 The House amended its rules to provide that, "In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinency of testimony and evidence adduced at its hearing."

On Mar. 23, 1955,[3] the House by voice vote approved House Resolution 151, known as the Code of Fair Procedures, one provision of which relates to a witness' opportunity to submit sworn statements.[4]

During the debate, this provision was discussed: [5]

> MR. [CLARENCE J.] Brown of Ohio: . . . It also provides that in the discretion of the committee witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. Members of the House know how much time that can save.
>
> The committee is the sole judge of the pertinency of the testimony and evidence adduced at its hearing.
>
> I think they have that right now.

Media Coverage

§ 13.11 The House amended its rules to provide that, "No witness served with a subpena by the committee shall be required against his will to be photographed at any

19. 101 CONG. REC. 3569, 3585, 84th Cong. 1st Sess.

20. See *House Rules and Manual* § 735(o) (1973).

1. 101 CONG. REC. 3572, 84th Cong. 1st Sess.

2. See § 13.2, supra, for criticisms of this and other provisions of the Code of Fair Procedures.

3. 101 CONG. REC. 3569, 3585, 84th Cong. 1st Sess.

4. See *House Rules and Manual* § 735(p) (1973).

5. 101 CONG. REC. 3572, 84th Cong. 1st Sess.

hearing or to give evidence or testimony while the broadcasting of that hearing, by radio or television, is being conducted. At the request of each witness who does not wish to be subjected to radio, television, or still photography coverage, all lenses shall be covered and all microphones used for coverage turned off. This paragraph is supplementary to paragraph (m) of clause 27 of this rule, relating to the protection of the rights of witnesses."

On Jan. 22, 1971,(6) the House approved House Resolution 5, which adopted applicable provisions of the Legislative Reorganization Act of 1970,(7) including a rule(8) which requires any committee that permits media coverage of public hearings to adopt rules allowing witnesses not to be exposed to television or still cameras or microphones.

Responsibility to Protect Rights

§ 13.12 The witness is primarily responsible for protecting his rights and invoking procedural safeguards guaranteed under the rules of the House, notwithstanding the fact that he may be accompanied by counsel to advise him of his rights.

On Oct. 18, 1966,(9) during consideration of a privileged report, House Report No. 2305, relating to the refusal of Yolanda Hall to testify before the House Committee on Un-American Activities,(10) Speaker John W. McCormack, of Massachusetts, responded to a parliamentary inquiry regarding the responsibility of a witness to protect his rights.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. YATES: Mr. Speaker, is it in order for me to request the Chair for an explanation of a part of the Chair's ruling; namely, that part which is directed to the representation before a committee of a witness by a lawyer?

In his ruling the Chair has indicated that counsel does not, as a matter of right, have the right to present argument, make motion, or make demands on the committee.

Does this mean, Mr. Speaker, that if an objection is to be voiced to an action

6. 117 CONG. REC. 144, 92d Cong. 1st Sess.

7. 84 Stat. 1140, Pub. L. No. 91–510, Oct. 26, 1970.

8. See *House Rules and Manual* § 739(b) (1973).

9. 112 CONG. REC. 27495, 89th Cong. 2d Sess.

10. See § 15.6, infra, for the point of order and debate regarding this report.

by the committee, that the objection must be made by the witness or the respondent himself, rather than by the counsel of the witness?

THE SPEAKER: It is incumbent upon the witness to protect himself, after consulting counsel, if he desires to consult counsel. But it is the duty of the witness to do so.

§ 14. —Right to Counsel

A witness' right to counsel[11] at an investigative hearing[12] is circumscribed by rules of the House,[13] rules of committees, precedents,[14] and court decisions. Rules of the House establish a minimum level of participation by counsel; committees either in their rules or in response to requests made at a hearing, may permit a counsel to do more than advise the witness about constitutional rights.

The Supreme Court implicitly approved a rule of the Committee on Un-American Activities which permitted counsel to accompany a witness for the purpose of advising him of his constitutional rights when it observed, "[Counsel for the witness] would not have been justified in continuing [seeking to read certain telegrams into the record], since Committee rules permit counsel only to advise a witness, not to engage in oral argument with the committee. Rule VII (b)."[15]

In General

§ 14.1 The House amended its rules to provide that, "Witnesses at investigative hearings may be accompanied by their own counsel for the purpose of advising them of their constitutional rights."

On Mar. 23, 1955,[16] the House by voice vote approved House Res-

11. See, for example, 3 Hinds' Precedents §§ 1696, 1741, 1771, 1788, 1837, 1846; 6 Cannon's Precedents § 400. 6 Cannon's Precedents § 336, for earlier precedents. For collateral sources, see Rauh, Joseph L., Jr., Representation before Congressional Committee Hearings, 50 J. of Crim. Law, Criminology, and Police Science 219 (1959), and Rauh and Pollitt, Right to and Nature of Representation before Congressional Committees, 45 Minn. L. Rev. 853 (1961).

12. This section deals only with investigative hearings on designated subject matters; it does not include investigations relating to impeachment (see Ch. 14, supra), election contests (see Ch. 9, supra), or conduct of Members (see Ch. 12, supra).

13. See §§ 14.1 and 14.2, infra.

14. See §§ 14.3 to 14.5, infra.

15. *Yellin* v *United States*, 374 U.S. 109, 112, 113 (1963).

16. 101 CONG REC. 3569, 3585, 84th Cong. 1st Sess.

olution 151, known as the Code of Fair Procedures, a provision of which permits witnesses at hearings to be accompanied by counsel.[17]

During the debate, questions were raised as to the effect of this provision:[18]

> MR. [GEORGE] MEADER [of Michigan]: May I draw the gentleman's attention to the provisions of paragraph (k) on that same page, lines 7, 8, and 9, relating to the right of witnesses to have counsel present at hearings. My question is, Would the absence of counsel where a witness demands the right to have counsel present vitiate the legal status of the inquiry?
>
> MR. [HOWARD W.] SMITH of Virginia: By no means. This is merely a privilege given to him. If he does not choose to exercise that privilege of having counsel, that is his fault.
>
> MR. MEADER: If he should demand that he be permitted to have counsel but there was no counsel present, would the committee be unable to proceed until counsel was present?
>
> MR. SMITH of Virginia: If he does not have his counsel, of course he cannot obstruct justice by using that sort of subterfuge. I have no doubt that any committee would be reasonable with him by reason of the sickness of his counsel.
>
> MR. MEADER: But the committee has not lost control over the proceeding because of this provision?
>
> MR. SMITH of Virginia: Not by any means.
>
> MR. MEADER: I think the gentleman may remember that Henry Grunewald and his counsel, William Power Maloney, delayed the King Subcommittee of the Ways and Means Committee for 6 hours with obstructionist tactics. Grunewald refused to testify because the committee finally ejected Maloney and he did not have any counsel there.
>
> MR. SMITH of Virginia: That could not occur under this rule. . . .
>
> MR. [CLARENCE J.] BROWN [of Ohio]: . . . The next provision provides for witnesses at investigative hearings—that does not mean ordinary legislative hearings where they are discussing a bill, such as a public-works project or an authorization bill, but where a committee is holding investigative hearings—that witnesses have the right to be accompanied by their own counsel, and that counsel shall have the privilege of advising them concerning their constitutional rights.
>
> That does not mean that the lawyer may sit there and answer every question of fact for the witness. But he may advise him as to his constitutional rights, whether he may plead the fifth amendment or refuse to answer on some other ground if he thinks his constitutional rights are being violated.
>
> MR. [KENNETH B.] KEATING [of New York]: . . . At lines 7 through 9 on page 2, I am troubled with the language chosen by the draftsmen, and wonder if it is exactly what was intended. Does this wording include an absolute right to be present in the event that a witness is heard in an executive session? Does it mean merely

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17. See *House Rules and Manual* § 735(k) (1973).

18. 101 CONG REC. 3569, 3572, 3582, 3583, 84th Cong. 1st Sess.

to be present in the room or to accompany the witness when he takes the stand, and if the latter, does it create a right to consult and confer without limitation during the course of the examination? Does the limitation, "concerning their constitutional rights" mean that counsel would be limited, in conferring with his client, to a discussion of the first or fifth amendments, which are the only constitutional provisions likely to be involved at any time, under normal circumstances?

May counsel not perform the usual and proper services of explanation and advice with respect to all the rights and duties pertaining to the status of the witness before the committee? . . .

Mr. Keating's inquiries were not directly addressed. He had, in earlier remarks, given his views on the background of the right to counsel: (19)

[W]e have long conceded that outsiders, appearing as witnesses before our committees, should be accorded certain rights. There is no specific basis for the right of a witness to be accompanied and advised by his counsel, nor for recognition of the traditional privileges of lawyer and client, doctor and patient, priest and penitent, and the like. But they are so universally accorded, and so deeply woven into our traditions of fairness and due process that they perhaps should be specified for the advice and comfort of all those who are called to testify. It is, as I said, only a matter of drawing the lines clearly and precisely where we wish them to lie.

19. 101 CONG. REC. 3582, 84th Cong. 1st Sess.

§ 14.2 The House amended its rules to provide that, "The chairman may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt."

On Mar. 23, 1955,(20) the House by voice vote approved House Resolution 151, known as the Code of Fair Procedures, one provision of which dealt with the powers of the chairman in maintaining order.(1) During the debate on the resolution, the effect of this provision was discussed: (2)

MR. [CLARENCE J.] BROWN of Ohio: . . . Then it spells out into law again what I believe the chairman of the committee already has, the power to punish breaches of order and decorum and of professional ethics on the part of counsel, by censure and exclusion from the hearings.

That legalizes, and it does away with any doubt as to the right of a chairman, in a case like that of Henry Grunewald, which was mentioned a moment ago, to say, "You are violating the rules of this committee, you are out." And he will tell the witness to get

20. 101 CONG. REC. 3569, 3585, 84th Cong. 1st Sess.

1. See *House Rules and Manual* § 735(1) (1973).

2. 101 CONG. REC. 3572, 84th Cong. 1st Sess.

another lawyer. And the committee may cite such an offender to the House for contempt. If a lawyer simply does not obey the orders of the chairman, if he creates a disturbance, if he refuses to leave, and the situation becomes serious such that the committee wants to recommend that he be cited by the House for contempt, then that may be done and it is up to the House to take action as it sees fit.

Counsel's Participation

§ 14.3 The privilege granted by the rule, permitting a witness at an investigative hearing to be accompanied by counsel to advise him of his constitutional rights, does not, as a matter of right, entitle the counsel to present argument, make motions, or make demands on the committee.

On Oct. 18, 1966,[3] Speaker John W. McCormack, of Massachusetts, during the ruling on a point of order raised against House Report 2305, relating to the refusal of Yolanda Hall to testify before the Committee on Un-American Activities,[4] indicated the scope of authority of counsel in advising a witness during an investigative hearing.[5]

THE SPEAKER: The Chair is prepared to rule.

The gentleman from Illinois [Mr. Yates] has raised a point of order against the privileged report filed by the gentleman from Louisiana, citing a witness before a subcommittee of the Committee on Un-American Activities for contempt. The point of order is based on the ground that the subcommittee, while holding hearings in Chicago, failed or refused to follow the rules of the House—specifically, rule XI, clause 26(m)—and, at the demand of the witnesses' attorney, take the testimony in executive session rather than in an open hearing. . .

The Chair will also point out parenthetically, that subsection (k) of rule XI, provides:

> Witnesses at investigative hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

This privilege, unlike advocacy in a court, does not as a matter of right entitle the attorney to present argument, make motions, or make demands on the committee.

§ 14.4 Although a witness at an investigative hearing, under

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3. 112 CONG. REC. 27494, 27495, 89th Cong. 2d Sess. See also *House Rules and Manual* § 735(k) (1973).

4. See § 15.6, infra, for the point of order and debate on this report.

5. The Speaker expressed the same view of the authority of counsel in responses to points of order raised against two House reports relating to refusals to testify before the Committee on Un-American Activities. See 112 CONG. REC. 27448, 89th Cong. 2d Sess., Oct. 18, 1966, and 112 CONG. REC. 27505, 89th Cong. 2d Sess., Oct. 18, 1966, for the rulings on points of order against H. REPT. No. 2302, the refusal of Milton Mitchell Cohen, and H. REPT. No. 2306, the refusal of Dr. Jeremiah Stamler.

the House rules, may be accompanied by counsel to advise him of his constitutional rights, the witness and not counsel is primarily responsible for protecting his rights and invoking procedural safeguards guaranteed under the rules of the House.

On Oct. 18, 1966,(6) during consideration of a privileged report, House Report No. 2305, relating to the refusal of Yolanda Hall, to testify before the House Committee on Un-American Activities,(7) Speaker John W. McCormack, of Massachusetts, responded to a parliamentary inquiry regarding the responsibility of a witness to protect his rights.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. YATES: Mr. Speaker, is it in order for me to request the Chair for an explanation of a part of the Chair's ruling; namely, that part which is directed to the representation before a committee of a witness by a lawyer?

In his ruling the Chair has indicated that counsel does not, as a matter of right, have the right to present argument, make motions, or make demands on the committee.

Does this mean, Mr. Speaker, that if an objection is to be voiced to an action by the committee, that the objection must be made by the witness or the respondent himself, rather than by the counsel of the witness?

THE SPEAKER: It is incumbent upon the witness to protect himself, after consulting counsel, if he desires to consult counsel. But it is the duty of the witness to do so.

§ 14.5 A House committee has discretion to refuse to allow demands of counsel at an investigative hearing and it may reject an attorney's demand that certain evidence be taken in executive session or require the witness personally to raise the issue.

On Oct. 18, 1966,(8) during consideration of a privileged report, House Report No. 2305, relating to the refusal of Yolanda Hall to testify before the House Committee on Un-American Activities,(9) the Speaker indicated that a demand that testimony be taken in executive session could be rejected at the discretion of the committee.(10)

6. 112 CONG. REC. 27495, 89th Cong. 2d Sess. See *House Rules and Manual* § 735(k) (1973) .

7. See § 15.6, infra, for this report.

8. 112 CONG. REC. 27495, 89th Cong. 2d Sess.

9. See § 15.6, infra, for this report.

10. See the ruling of Speaker John W. McCormack (Mass.), discussed in § 14.3, supra.

§ 15. Effect of Derogatory Information

In 1955, the House amended its rules to prescribe the procedures to be followed upon a determination that evidence at a hearing "may tend to defame, degrade, or incriminate a person." The provisions of the rule, and their application, are discussed in detail in succeeding sections.[11]

The three requirements of the rule are cumulative and mandatory.[12] Thus, a committee, upon determining that evidence adduced at an investigative hearing may tend to defame, degrade, or incriminate a person, must (1) receive the evidence in executive session; (2) afford the person an opportunity to appear voluntarily as a witness; and (3) receive and dispose of requests from such a person to subpena additional witnesses.

If a committee affords a witness the opportunity to appear voluntarily to testify in executive session and that opportunity is ignored by the witness, the committee cannot thereafter proceed as if it had fully complied with the rule but must issue a subpena and comply with all other requirements of the rule. However, if the witness thereafter appears in response to a subpena and, when called, asks for an executive session, the committee must determine, as provided by the rule, whether the testimony will tend to defame, degrade, or incriminate. If the committee determines that the evidence will not so tend, it may then proceed in open session.[13]

Although the rule was intended to apply to third parties rather than witnesses,[14] it has been the subject of points of order relating to rights of witnesses.[15]

In General

§ 15.1 As part of the Code of Fair Procedures, the House amended the rules to provide that, "If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate a person, it shall (1) receive

11. See § 15.1, infra, for a discussion of the rule and its adoption. See §§ 15.2–15.6, infra, for application of particular provisions.

12. See the ruling of the Chair set forth in § 15.4, infra.

13. See the proceedings discussed in § 15.6, infra. See also 112 CONG. REC. 27506, 89th Cong. 2d Sess., Oct. 18, 1966.

14. See § 15.1, infra.

15. See §§ 15.2–15.6, infra.

such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses."

On Mar. 23, 1955,[16] the House by voice vote approved House Resolution 151, known as the Code of Fair Procedures, which included a provision providing safeguards to be followed in the reception of derogatory testimony.[17]

Commenting on this provision, the Chairman of the Committee on Rules, Howard W. Smith, of Virginia, stated that, ". . . when a person is named in a committee hearing and his good reputation besmirched, he shall have a prompt opportunity to appear and refute the charges.[18] The effects of this provision were further discussed:[19]

> MR. [CLARENCE J.] BROWN of Ohio: . . . Then if the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, this resolution provides that it shall receive such testimony in executive session; that is, if it is possible to do so, they may go immediately into executive session. They shall afford such person an opportunity voluntarily to appear as a witness to refute such statements or testimony against him; and it shall receive and dispose of requests from such a person to subpena additional witnesses. Those rights are given to the witness. . . .
>
> MR. [JAMES C.] MURRAY of Illinois: We had considerable discussion when another bill was up today concerning the meaning of the words "shall" and "may." I notice in line 16 on page 2, it says with reference to testimony that may tend to defame, degrade, or incriminate a person that the committee shall do so and so. Is that mandatory or is it permissive?
>
> MR. BROWN of Ohio: Where it finds that it may tend to defame, degrade, or incriminate a person, it shall do so and so; it shall receive such evidence and testimony until it satisfies itself whether it is true.
>
> MR. MURRAY of Illinois: Is that mandatory?
>
> MR. BROWN of Ohio: Yes, that is mandatory, in my opinion. They shall afford such person who had been defamed the right voluntarily to come before the committee and refute it, which is a fair thing and a procedure which practically all the committees of the House now follow.
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> MR. [PORTER] HARDY [Jr., of Virginia]: Mr. Speaker, will the gentleman yield?
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> MR. BROWN of Ohio: I yield to the gentleman from Virginia.

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16. 101 CONG. REC. 3569, 3585, 84th Cong. 1st Sess.

17. See *House Rules and Manual* § 735(m) (1973).

18. 101 CONG. REC. 3569, 84th Cong. 1st Sess.

19. 101 CONG. REC. 3572, 3573, 84th Cong. 1st Sess.

MR. HARDY: On that particular point, the discussion centers around whether or not the testimony would tend to degrade or intimidate the witness. That is what the section says.

MR. BROWN of Ohio: The gentleman reads into it something that is not in there. It says "degrade any person."

MR. HARDY: That is exactly my point. It would mean, then, that if a committee held an executive session and determined that they were going to receive testimony which would indicate that an individual not the witness had misappropriated Government property, for instance, under this language it could not hold that testimony in open session.

MR. BROWN of Ohio: That is right. If I charge you with being a thief, the committee goes into executive session to explore as to whether or not I have any justification for that charge and you have the right to answer it. Then, if they determine that there is some ground for my charge against you, they can have all the open sessions they want to have.

MR. HARDY: Is there anything in here that shows that you can open that hearing up?

MR. BROWN of Ohio: Certainly, because it provides only the two things they shall do in such circumstances. . . .

MR. [EDWIN E.] WILLIS [of Louisiana]: That provision under discussion refers to a person not on the stand?

MR. BROWN of Ohio: That is right.

MR. WILLIS: It refers to defaming third parties, not the man on the stand?

MR. BROWN of Ohio: That is right.

MR. HARDY: I understand that, but suppose you have a situation that clearly shows that there has been abuse?

MR. BROWN of Ohio: What does it say here? They consider that in executive session, then they come back into open session after they have got the information and, if they decide there is some substance to your charge, or my charge against you, then they can go ahead and have all the open hearings they want.

MR. HARDY: They can have all the open hearings they want, then.

MR. WILLIS: I think this is important. The controlling part of that particular section is that "If the committee determines," then such and such happens.

MR. BROWN of Ohio: That is right.

MR. WILLIS: But the determination must be made first.

MR. BROWN of Ohio: It rests entirely with the committee.

MR. HARDY: The gentleman is absolutely correct. It is only where the person is brought up for the first time and when the committee determines that the matter should be gone into; then you can have all the public hearings you want.

MR. BROWN of Ohio: If they think the man has been defamed. If I say you are a Communist and the evidence shows you are not, then I have not told the truth. The committee determines whether or not you have been defamed.

MR. HARDY: That is exactly right. Then you can have all the public hearings you want.

MR. SMITH of Virginia: Mr. Speaker, I yield 5 minutes to the gentleman from Georgia [Mr. Forrester].

MR. [ELIJAH L.] FORRESTER [of Georgia]: . . . With regard to the particular portion which was inquired about by the gentleman from Virginia [Mr. Hardy], the answer given by the gentleman from Ohio [Mr. Brown] is absolutely correct. All on earth this provision does is that if a man's name is brought up before a committee for the first time, you go into executive session and you somewhat simulate the action of a grand jury. That is a fair provision.

MR. [EDWARD T.] MILLER of Maryland: Mr. Speaker, will the gentleman yield?

MR. FORRESTER: I yield.

MR. MILLER of Maryland: I share the view of the gentleman from Virginia that that may be the intention, but certainly the language here does not indicate how it would be possible to bring out evidence that you knew was going to degrade somebody except in executive session. I do not see any language here that permits that.

MR. FORRESTER: No matter where it is brought out, if it is in executive session, then, of course, you can deal with it, but if it is in public session, then you simply suspend and go into executive session and determine whether or not there is a reason to expose that man's name publicly. That is a right which the Congress should be the first to concede to any person. . . .

This clause aroused some criticism, as shown in the remarks below:[20]

MR. HARDY: I am in complete accord with the objectives of the committee, and I congratulate the committee on attempting to deal with a very difficult problem. However, I think that subsection (m), as now written, will hamper every investigation that is ever undertaken.

MR. FORRESTER: I do not think so. * * *

MR. [KENNETH B.] KEATING [of New York]: * * * I am also puzzled and troubled a little about subparagraph (m) and the way it is intended to work. In the first place, it specifies that "if the committee determines" that certain evidence or testimony is defamatory, degrading, or incriminating, it must then hear the same in executive session—but in order for the committee to make such a determination it would appear that some consideration of the evidence or testimony would already have to have taken place. So I wonder if the requirement is not self-defeating, in that the harm would be done before the committee would ever be in a position to provide the intended protection.

In passing, I should also like to raise a grave question about this matter of executive sessions. Undoubtedly, it is a good and desirable thing to create a right, at least in limited circumstances, for a person who is likely to be injured by testimony to have the testimony taken at a secret hearing. I favor that, if some practical way to accord it without tying the committee's hands can be worked out.

But I am also persuaded that there is, as a practical possibility at least, a considerable danger of abuse in the other direction, namely, a danger that the secret hearing may also be used as a truly terrible reincarnation of the star chamber. If a hostile and unwill-

20. 101 CONG. REC. 3573, 3583, 84th Cong. 1st Sess.

ing witness is forced to submit to lengthy examination, under oath and on record, in a secret session, he can be put at a terrible disadvantage when the committee later raises the curtain and conducts the interrogation again publicly. He is bound to everything he said, at the peril of imminent prosecution for perjury, and his interrogators are able to pick and choose from only the most damaging concessions and exactions. In some of the drafts last year this matter was handled by creating, in the witness, a right to insist upon being heard publicly if he feared the secret session. There are some possible difficulties with this, although the hostile witness who invokes such a right would probably be of little legitimate value to the committee in any case. . .[21]

Receiving Testimony in Executive Session

§ 15.2 A point of order was raised against a committee report citing a witness in contempt, on the ground that the committee had violated a House rule by not receiving certain testimony in executive session.

On Oct. 18, 1966, Mr. Sidney R. Yates, of Illinois, raised points of order against House Report Nos. 2302 [22] 2305 [23] and 2306 [24] relating to refusals of three named individuals to testify before the Committee on Un-American Activities, on the ground that the committee violated Rule XI clause 27(m), [1] by not receiving in executive session evidence and testimony which would allegedly defame, degrade, or incriminate these individuals.

Speaker John W. McCormack, of Massachusetts, overruled each point of order, stating as his reasons those set forth in sections following.[2]

Prerequisite for Committee Determination

§ 15.3 Where a person subpenaed as a witness responded to his name and then left the hearing room without making any statement other than that he refused to testify, the committee could not be said to violate the House rule relating to derogatory informa-

21. See § 13.2, supra, for other criticism of this provision.

22. See § 15.3, infra, for this point of order.

23. See § 15.6, infra, for this point of order.

24. See 112 CONG. REC. 27505, 89th Cong. 2d Sess., for this point of order.

1. See House Rules and Manual § 735(m) (1973).

2. See §§ 15.3, 15.6, infra.

tion since the proceedings had never reached the point where the testimony could be said to tend to degrade, defame, or incriminate.

On Oct. 18, 1966,[3] Speaker John W. McCormack, of Massachusetts, in response to a point of order by Mr. Sidney R. Yates, of Illinois, against privileged House Report No. 2302, citing Milton Mitchell Cohen, of Chicago, Ill., in contempt for refusal to respond to questions at a hearing, ruled that the Committee on Un-American Activities had not violated Rule XI clause 27(m),[4] because the proceedings had not reached the stage at which the committee determines whether to hear evidence or testimony in executive session.

PROCEEDINGS AGAINST MILTON MITCHELL COHEN

MR. [EDWIN E.] WILLIS [of Louisiana]: Mr. Speaker, I rise on a question of the privilege of the House, and by direction of the Committee on Un-American Activities I submit a privileged report—House Report No. 2302. . . .

MR. YATES: Mr. Speaker, I make a point of order against the resolution offered by the Committee on Un-American Activities. The committee appears here today claiming the privilege of the House. It asserts that this House has been injured, that its dignity and its integrity have been threatened, even impaired, by reason of the refusal of the respondents to give testimony to the committee at a public hearing duly convened. It now asks this House in this resolution to hold the respondent in contempt so that he may be punished by the criminal processes of the law for his refusal to testify.

Mr. Speaker, there is no doubt that the respondent did refuse to give testimony. The question I raise for the consideration of the Chair is whether a witness may be required to give such testimony when the committee itself has violated the [rights] of the respondent by refusing to follow the Rules of the House which were specifically established to protect the rights of the respondents for this purpose. . . .

This committee, the Committee on Un-American Activities, has failed and refused to follow the Code of Fair Procedure by denying the request of the respondent that his testimony be taken in executive session. . . .[5]

May a committee of this House deny the protection of the rules which were approved by this House for the purpose of protecting witnesses who request that protection? There are no precedents of the House on this point, but the Supreme Court[6] faced with a

3. See the proceedings at 112 CONG. REC. 27439–48, 89th Cong. 2d Sess.

4. See *House Rules and Manual* § 735(m) (1973).

5. See § 13.1, supra, for discussion of adoption of this code.

6. See *Yellin* v *United States*, 374 U.S. 109 (1963), which reversed a conviction because the Committee on Un-American Activities failed to comply with its own rule, not a House rule, regarding executive sessions rather

similar question decided that a committee could not compel a witness to testify under such circumstances, and the Court, the Supreme Court of the United States, vacated a criminal contempt conviction that had been entered against a defendant whose case had come up from the Committee on Un-American Activities.

Mr. Speaker, what does rule 26(m) provide? I read it, Mr. Speaker. It says this:

If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall do the following:

First. It shall receive such evidence or testimony in executive session;

Second. It shall afford such person an opportunity voluntarily to appear as a witness; and—not "or" but "and," Mr. Speaker.

Third. Receive and dispose of requests from such persons to subpena additional witnesses.

It is to be noted, Mr. Speaker, that the three requirements of the committee are not in the alternative. They are cumulative.

In his letter of May 25, the chairman of this committee wrote a letter to the respondent saying that the committee was acting pursuant to [Rule XI clause 27(m)] in offering to take the testimony in executive session. Thus, the rule had been activated and a decision had been made by the committee that the testimony was of a type that would tend to defame, degrade, or incriminate.

Mr. Speaker, in offering the witness this opportunity to appear voluntarily and give testimony in executive session, the committee was complying with section 2 of the rule.

But, Mr. Speaker, when the witnesses did not appear voluntarily, in spite of the fact that the conditions for requiring testimony to be taken in executive session were still present; namely, that the testimony would tend to degrade, defame, or incriminate, the committee determined to receive the testimony in public session. . . .

The SPEAKER: The Chair will hear the gentleman from Georgia [Mr. Weltner].

MR. [CHARLES L.] WELTNER: . . .

[T]he report before the Speaker and before the Members shows that on May 18, Mr. Cohen, without relying upon any constitutional protection, announced through his attorney that he was departing from the witness room without submitting himself to any questions by the committee, after stating only his name and address.

The rules of the House have been religiously followed in this instance, in each case, in each of the three burdens upon the House committee pursuant to rule 26(m). . . .

There was a request by his attorney that he be called and examined in executive session. The record of the hearing will show, Mr. Speaker, that subsequent to the making of that request, this committee recessed the public hearings; that it undertook to consider his request in executive session; that the factors making up the substance of his request were considered; and the request was by unanimous vote of that committee denied. . . .

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than the House rule discussed here. *Yellin* is discussed at § 1 5.6, infra.

The SPEAKER: The Chair is ruling only in these cases on this particular case concerning Milton Mitchell Cohen. The gentleman from Illinois [Mr. Yates] has raised a point of order against the privileged report filed by the gentleman from Georgia [Mr. Weltner] citing a witness before a subcommittee of the Committee on Un-American Activities of the House for contempt. The point of order is based on the ground that the subcommittee while holding hearings in Chicago failed or refused to follow the rules of the House, specifically rule XI, clause 26(m) and, at the demand of the witnesses' attorney, take the testimony in executive session rather than in an open hearing. . . .

The Chair agrees with the gentleman from Illinois that the three subclauses are not in the alternative. Each subclause stands by itself. The Chair will point out, however, that the subsection places the determination with the committee, not with the witness. . . .

Now the Chair will cite clause 26(a) of rule XI, which states that the rules of the House are the rules of its committees so far as applicable. This provision also applies to the subcommittees of any such committee. Consequently, the Chair must examine the facts to see if the subcommittee did in fact comply with clause 26(m) of rule XI.

The Chair will call attention to the fact that it is pointed out on page 8 of the report that the witness was invited to appear and testify in executive session. The invitation was ignored.

It will be noted, on pages 11 and 12 of the committee report, that the attorney for witness Cohen instructed his client not to give any testimony pending determination of a legal action in the U.S. District Court for the Northern District of Illinois.

The witness then left the hearing room, notwithstanding the admonition of the chairman of the subcommittee.

The Chair fails to see how clause 26 (m) of rule XI becomes involved since the witness left the hearing room after his attorney had instructed him not to answer any questions pending determination of the legal proceedings.

The Chair, therefore, overrules the point of order.

Committee Determinations

§ 15.4 The determination that evidence may tend to defame, degrade, or incriminate a person, a prerequisite to certain procedural steps under House rules lies with the committee and not with the witness.

On Oct. 18, 1966, Speaker John W. McCormack, of Massachusetts, in the course of ruling on the point of order discussed above, stated[7] that the committee, not

7. 112 CONG. REC. 27448, 89th Cong. 2d Sess. See § 15.3, supra, for the point of order. See also § 15.6 and 112 CONG. REC. 27505, 27506, 89th Cong. 2d Sess., Oct. 18, 1966, for the same ruling on this issue to points of order raised by Mr. Sidney R. Yates (Ill.), against H. REPT. Nos. 2305 and 2306 relating to refusals of Yolanda Hall and Dr. Jeremiah

the witness, determines whether evidence may tend to defame, degrade, or incriminate a person under Rule XI clause 27(m).[8]

The SPEAKER: . . . The point of order is based on the ground that the subcommittee while holding hearings in Chicago failed or refused to follow the rules of the House, specifically rule XI, clause 26(m) and, at the demand of the witnesses' attorney, take the testimony in executive session rather than in an open hearing. . . .

The Chair has . . . refreshed his recollection of clause 26(m), rule XI, which reads as follows:

> If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—
>
> (1) receive such evidence or testimony in executive session;
>
> (2) afford such person an opportunity voluntarily to appear as a witness; and
>
> (3) receive and dispose of requests from such person to subpena additional witnesses.

The Chair agrees with the gentleman from Illinois that the three subclauses are not in the alternative. Each subclause stands by itself. The Chair will point out, however, that the subsection places the determination with the committee, not with the witness.

§ 15.5 With respect to evidence or testimony at an investigative hearing which may tend to defame, degrade, or incriminate a person, the committee, under the rules of the House, determines whether to hold an executive session or publicize material which has been received in executive session.

On Apr. 5, 1967,[9] during consideration of House Resolution 221, providing additional expense funds for the Committee on Un-American Activities, Speaker John W. McCormack, of Massachusetts, responded to parliamentary inquiries relating to the discretion of a committee under Rule XI clause 27(m).[10]

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker [rule XI, 27(m)] of the Rules of the House of Representatives states as follows:

> If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—
>
> (1) receive such evidence or testimony in executive session;

Mr. Speaker, my question is this: If the committee determines that the evidence it is about to receive may tend to defame, degrade or incriminate a witness, is it not compulsory under the Rules of the House for the committee

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Stamler, respectively, to testify before the Committee on Un-American Activities.

8. See *House Rules and Manual* § 735(m) (1973).

9. 113 CONG. REC. 8420, 8421, 90th Cong. 1st Sess.

10. See *House Rules and Manual* § 735(m) (1973).

to hold such hearings in executive session?

THE SPEAKER: The Chair will state that that is a matter which would be in the control of the committee for committee action. . . .

MR. YATES: I must say that I do not understand the ruling. Is the Chair ruling that a committee can waive this rule? That it can refuse to recognize this rule?

THE SPEAKER: The Chair would not want to pass upon a general parliamentary inquiry, as distinguished from a particular one with facts, but the Chair is of the opinion that if the committee voted to make public the testimony taken in executive session, it is not in violation of the rule, and certainly that would be a committee matter.

MR. YATES: A further parliamentary inquiry, Mr. Speaker. What the Chair is now stating is that if the committee votes at a subsequent time to make public such a hearing, under the rules it may do so. But that does not bear upon the question I addressed to the Speaker, which was this: in the first instance, when testimony is to be taken by the committee, and such testimony tends to defame, degrade, or incriminate any person, must it be taken in executive session? . . .

THE SPEAKER: The Chair will be very frank. The Chair recognizes the power of the committee. If the committee goes into executive session, the Chair is not going to make a ruling under those circumstances as to whether a committee could make public testimony taken in executive session.

MR. YATES: May I pursue one further parliamentary inquiry, Mr. Speaker. The rule states:

> If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—
>
> (1) receive such evidence or testimony in executive session.

The question I addressed to the Chair was whether the committee could waive that rule.

THE SPEAKER: The rule says:

> If the committee determines

And there has to be a determination by the committee—

> that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—

First it has to make a determination. Without passing on this, the Chair can look into the future and see where the committee might make a determination, and then when it goes into executive session and receives the evidence, it may find there the evidence did not justify the original determination, or the evidence is of such a nature that it justifies being made public.

MR. YATES: I thank the Chair. Then I take it from the Chair's response to my inquiry that so long as the committee has made such a finding and has not vacated it, the rule is applicable.

THE SPEAKER: The Chair is not even going to go that far—not on this occasion. The Chair has been perfectly frank. Of course, sometimes the word "shall" I know has been construed by the courts sometimes as "may". The gentleman is familiar with that, I am sure. The Chair is not doing that on this occasion. The Chair would have to ascertain the facts in a particular case.

Consequence of Committee Determination

§ 15.6 A point of order that a committee violated a House rule relating to the reception of derogatory evidence, made against a committee report citing a witness for refusal to testify, could not be sustained where the subpenaed witness requested through counsel that evidence and testimony be taken in executive session, and the committee recessed, considered, and denied the request, having determined during the recess that these materials would not tend to defame, degrade, or incriminate any person; such committee actions, it was held, constituted compliance with the clause.

On Oct. 18, 1966,[11] Speaker John W. McCormack, of Massachusetts, overruled a point of order raised by Mr. Sidney R. Yates, of Illinois, that the Committee on Un-American Activities violated Rule XI clause 27(m),[12] by not holding an executive session; the Speaker found that the committee had duly considered and rejected the request.

PROCEEDINGS AGAINST YOLANDA HALL

MR. [EDWIN E.] WILLIS [of Louisiana]: Mr. Speaker, I rise to a question of the privilege of the House and by direction of the Committee on Un-American Activities, I submit a privileged report-House Report No. 2305.

The Clerk read as follows: . . . [13]

MR. YATES: Mr. Speaker, I make a point of order against the resolution on the grounds that it is violative of [rule XI, paragraph 27 (m)] of the rules of the House, requiring that testimony which may tend to defame, degrade, or incriminate the witness be taken in executive session. I do not intend to go into the same delineation of my reasons that I gave in connection with the preceding resolution.[14] But I suggest, with due respect, that the Chair should consider the fact that in this case, even though the Supreme Court of the United States decision is not controlling, it is nevertheless persuasive, and I should like to read to the Chair from the decision in the case of *Yellin* v. *the United States*, 374 U.S.

11. See the proceedings at 112 CONG. REC. 27486–95, 89th Cong. 2d Sess. See also 112 CONG. REC. 27500–06, 89th Cong. 2d Sess., Oct. 18, 1966, for the same ruling on a point of order raised against H. REPT. NO. 2306, regarding the refusal of Dr. Jeremiah Stamler to testify before the Committee on Un-American Activities.

12. See *House Rules and Manual* § 735(m) (1973).

13. The report is omitted.

14. See § 15.3, supra, relating to a contempt citation against Milton Mitchell Cohen, during which Mr. Sidney R. Yates (Ill.), raised similar objections.

109, page 114, where the Court recited the rule which was then under consideration as follows: (1)

> Executive hearings: If a majority of the committee or subcommittee duly appointed as provided by the Rules of the House of Representatives believes that the interrogation of a witness in a public hearing might endanger national security or unjustly injure his reputation or the reputation of other individuals, the committee shall interrogate such witness in an executive session for the purpose of determining the necessity or the advisability of conducting such interrogation thereafter in a public hearing.

Mr. Speaker, I now read from the decision of the Court on this particular rule, where the Court, discussing the rules that make up the Code of Fair Procedure that were approved in the year 1955, said as follows:

> All these rules work for the witness' benefit. They show that the committee has in a number of instances intended to assure the witness fair treatment, even the right to advice of counsel or undue publicity, and even the right not to be photographed by television cameras.
>
> Rule IX, in providing for an executive session when a public hearing might unjustly injure a witness' reputation, has the same protection import. And if it is the witness who is being protected, the most logical person to have the right to enforce those protections is the witness himself.

I respectfully suggest, Mr. Speaker, that the respondent, who was called as a witness, requested in the instant case that she be afforded the opportunity to testify in an executive session, a request that was denied by the committee. The respondent subsequently walked out on the committee without testifying.

I read from the court, to show that the respondent had no alternative under such circumstances. On page 121 the court says this:

> Petitioner has no traditional remedy, such as the writ of habeas corpus . . . by which to redress the loss of his rights. If the Committee ignores his request for an executive session, it is highly improbable that petitioner could obtain an injunction against the Committee that would protect him from public exposure. . . . Nor is there an administrative remedy for petitioner to pursue should the Committee fail to consider the risk of injury to his reputation. To answer the questions put to him publicly and then seek redress is no answer. For one thing, his testimony will cause the injury he seeks to avoid; under pain of perjury, he cannot by artful dissimulation evade revealing the information he wishes to remain confidential. For another, he has no opportunity to recover in damages. Even the Fifth Amendment is not sufficient protection, since petitioner could say many things which would discredit him without subjecting himself to the risk of criminal prosecution. The only avenue open is that which petitioner actually took. He refused to testify.

This is the decision of the Court. I respectfully suggest to the Speaker that it would sustain the dignity and integrity of the House if the interpretation of the rule for which I contend were sustained. . . .

MR. [RICHARD H.] ICHORD [of Missouri]: . . . To assist the Chair in rul-

1. The quoted rule is taken from the rules of the Committee on Un-American Activities, not the rules of the House.

ing on the point of order of the gentleman from Illinois I would point out to the Chair that the facts are essentially the same as in the Cohen case, and that the gentleman from Illinois has raised a point of order again under [rule XI 27(m)] that the witness, Yolanda Hall, should have been afforded an executive session.

Mr. Speaker, in this case the question of executive session is not at issue. . . .

I direct the Speaker's attention to page 14 of the committee report, which sets out the hearings in full.

I direct the Speaker's attention to line 16, which will make it clear to the Speaker that the witness, Yolanda Hall, did not request an executive session from the House Committee on Un-American Activities. . . .

MR. YATES: . . . I . . . refer the Chair to page 337 of the hearings where there appears a statement by Mr. Sullivan as follows:

> I ask this committee to take in executive session any testimony by my clients, that is, Dr. Stamler and Mrs. Hall, and any testimony by any other witnesses about Dr. Stamler and Mrs. Hall. That is my request.

So that the request was made, Mr. Speaker, for testimony to be taken in executive session. . . .

THE SPEAKER: The Chair is prepared to rule.

The gentleman from Illinois [Mr. Yates] has raised a point of order against the privileged report filed by the gentleman from Louisiana, citing a witness before a subcommittee of the Committee on Un-American Activities for contempt. The point of order is based on the ground that the subcommittee, while holding hearings in Chicago, failed or refused to follow the rules of the House—specifically, [rule XI, clause 27 (m)]—and, at the demand of the witnesses' attorney, take the testimony in executive session rather than in an open hearing.

The Chair will again read [clause 27 (m), rule XI], as follows:

> (m) If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—
>
> (1) Receive such evidence or testimony in executive session;
>
> (2) Afford such person an opportunity voluntarily to appear as a witness; and
>
> (3) Receive and dispose of requests from such person to subpena additional witnesses.

The Chair again agrees with the gentleman from Illinois that the three subclauses are not in the alternative. Each subclause stands by itself. The Chair will point out, however, that the subsection places the determination with the committee, not with the witness. . . .

Now the Chair will cite [clause 27(a) of rule XI], which states that the rules of the House are the rules of its committees so far as applicable. This provision also applies to the subcommittees of any such committee. Consequently, the Chair must examine the facts to see if the subcommittee did in fact comply with [clause 27(m) of rule XI].

The Chair will call attention to the fact that it is pointed out on page 8 of the report that the witness in this instance was invited to appear and testify in executive session. The invitation was ignored.

It will be noted, on pages 11 through 14 of the committee report, that the attorney for witness Hall made demand for an executive session. You will note, on page 11 of the report, that when the demand for an executive session was made, the subcommittee took a recess. It is obvious from the subcommittee chairman's statement following that recess, that the subcommittee had considered and determined not to take the testimony in executive session. The chairman so states, on page 12 of the Hall citation:

> Your motion, now made, that Mrs. Hall be now heard in executive session I deny after consideration of the subcommittee. We have complied with [rule 27(m)] and all other applicable rules of the House and of this committee.

It is patently clear to the Chair that the subcommittee did comply with [clause 27 (m)], and made the determination necessary thereunder. Accordingly, the Chair overrules the point of order.

§ 16. Calling Witnesses; Subpenas

This section discusses the calling of witnesses generally, and, specifically, subpenas ad testificandum to compel testimony, and subpenas duces tecum to compel production of papers, before the House or Senate or their committees or subcommittees.(2) It does not encompass all material relating to calling witnesses; subjects not discussed here include court subpenas for House papers,(3) investigations leading to impeachment,(4) inquiries into conduct of Members,(5) or qualifications or disqualifications of Members or Members-elect.(6)

A subpena is not a necessary prerequisite to an indictment and conviction for contempt under the

2. See § 4, supra, for a discussion of subpenas issued to the executive branch, and § 11, supra, for discussion of fourth amendment considerations. See also 1 Hinds' Precedents § 25; 2 Hinds' Precedents §§ 1313 and 1608; 3 Hinds' Precedents §§ 1668, 1671, 1673, 1695, 1696, 1699, 1700, 1714, 1732, 1733, 1738, 1739, 1750, 1753, 1763, 1766, 1800, 1801–1810, 1813–1820; 6 Cannon's Precedents §§ 336, 338, 339, 341, 342, 344, 346–349, 351, 354, 376, for earlier precedents. For related discussion, see § 13.11, supra, regarding a subpenaed witness right not to be photographed; §§ 15.1 and 13.6, supra, relating to disposition of requests to subpena witnesses when derogatory information has and has not been received, respectively; and §§ 17.4 and 19.4, infra, relating to citation of persons who have not been subpenaed. See also all precedents in § 20, infra, as they relate to refusals to appear, be sworn, testify, or produce documents in response to subpenas.

3. See Ch. 11, supra, discussing privilege.

4. See Ch. 14, Impeachment Powers, supra.

5. See Ch. 12, supra.

6. See Ch. 7, Members, supra.

statute, 2 USC § 192, because its provisions apply to contumacy by every person who has been "summoned as a witness by the authority of either House of Congress to give testimony or to produce papers. . . ."[7]

A voluntary appearance before a committee does not immunize a person against service of a subpena. Consequently, a witness who was served with a subpena at a hearing at which he appeared voluntarily and refused to answer questions could legally be indicted and convicted of contempt.[8]

A properly authorized subpena issued by a committee or subcommittee has the same force and effect as a subpena issued by the House or Senate itself.[9] Authority to issue subpenas is granted either by provisions of the rules of the House[10] or resolutions approved by the House or Senate.[11]

Because failure to comply with procedures prescribed in the rules or authorizing resolution invalidates subpenas, a subpena signed by the chairman but not authorized by a subcommittee[12] and another authorized by the chairman after consultation with one other member but not the full subcommittee,[13] were held invalid.

Parliamentarian's Note: The committee or subcommittee must actually meet with a quorum

7. *Kamp* v *United States,* 176 F2d 618 (D.C. Cir. 1948). See also, *Sinclair* v *United States,* 279 U.S. 263, 291 (1929), which held that the contempt statute extends to a case where a witness voluntarily appears as a witness. Nonetheless, the House has deleted from a contempt citation names of persons who had not been subpenaed; see § 17.4, infra.

8. *Dennis* v *United States,* 171 F2d 986 (D.C. Cir. 1948).

9. *McGrain* v *Daugherty,* 273 U.S. 135, 158 (1927). See discussion at 6 Cannon's Precedents § 341; see also *In re Motion to Quash Subpenas and Vacate Service,* 146 F Supp 792 (W.D. Pa. 1956).

10. In the 93d Congress, five committees, Appropriations, Budget, Government Operations, Internal Security, and Standards of Official Conduct, possessed authority under the rules to grant subpenas; see Rule XI clauses 2(b), 8(d), and 11(b) respectively, *House Rules and Manual* §§ 679, 691, and 703 A (1973). In the 94th Congress, all committees functioning under Rule X or XI were granted subpena authority by the standing rules and only select committees derived subpena authority from special resolutions.

11. Note: Recent changes in the procedure described herein, including methods of authorization, will be discussed in supplements to this edition as they appear.

12. *Shelton* v *United States,* 327 F2d 601 (D.C. Cir. 1963).

13. *Liveright* v *United States,* 347 F2d 473 (D.C. Cir. 1965).

present to authorize the issuance of a subpena, since under section 407 of *Jefferson's Manual* a committee "can only act when together, and not by separate consultation and consent."

Minor irregularities in the form of a subpena do not invalidate it when the meaning is clear to the person to whom it is directed. An objection to a variance between a subpena duces tecum which directed the witness to produce records of the United Professional Workers of America, and an indictment, which alleged refusal to produce records of the United Public Workers of America, of which the witness was president, was held to be frivolous, particularly because the witness called attention to the error.(14)

A subpena directing a member of the executive board of an association to produce organizational records was held not defective as being addressed to an individual member of the board rather than to the association.(15) And postponement of a hearing did not excuse a refusal to testify on a date subsequent to the one that appeared on the subpena, despite the fact that the subpena did not contain a clause directing the witness to remain until excused, when the witness was present in Washington on the later date to attend the hearing and did not raise the issue at the time.(16)

Unlike a minor irregularity in form, a finding of invalidity of part of a subpena voids the whole subpena. Following the general rule that, "one should not be held in contempt under a subpena that is part good and part bad,"(17) a court of appeals stated in one case that the court had a burden to see that the subpena was good in its entirety. Believing that a person facing punishment should not have to cull the good from the bad, the court dismissed the indictment for contempt, because the subpena exceeded the authority delegated to the committee.(18) Similarly, the contempt conviction of the Executive Director of the Port of New York Authority, who provided subpenaed materials relating to the actual activities and

14. *Flaxer* v *United States,* 235 F2d 821 (D.C. Cir. 1956), vacated and remanded, 354 U.S. 929 (1957), aff'd., 258 F2d 413 (D.C. Cir. 1958), reversed on other grounds, 358 U.S. 147 (1958).

15. *United States* v *Fleischman,* 339 U.S. 349 (1950), rein. denied, 339 U.S. 991 (1950).

16. *United States* v *Groves,* 18 F Supp 3 (W.D. Pa. 1937).

17. *Bowman Dairy Company* v *United States,* 341 U.S. 214 (1951).

18. *United States* v *Patterson,* 206 F2d 433 (D.C. Cir. 1953).

operations of the authority but refused to supply materials relating to the reasons for these activities, was reversed on the ground that the latter category exceeded the authority granted by the House to the investigative unit, a subcommittee.[19] Nonetheless, in one case it was held that the mere possibility that the general terms of a subpena could be construed to include materials protected by the first amendment could not justify a blanket refusal to produce anything, in the absence of an objection that the subpena was too broad.[20] And a witness' conviction for obstruction of justice for mutilating or concealing records subpenaed was upheld on appeal notwithstanding the fact that the subpena had not been properly authorized. A valid subpena was not considered vital, since the defendant knew the documents were desired by a congressional committee.[1]

To assure the attendance of a witness who refused to answer questions before a committee, the House or Senate may order the Speaker or President of the Senate, respectively, to issue a warrant ordering the Sergeant at Arms to arrest the witness and bring him before the bar of the parent body, if there is a reasonable belief that important evidence may otherwise be lost.[2]

Where a committee of Congress has subpenaed a witness to appear at a hearing without defining questions to be asked, the judicial branch should not enjoin in advance the holding of the hearing or suspend the subpena; the rights of a witness regarding any question actually asked at the hearing are subject to determination in appropriate proceedings thereafter.[3]

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19. *Tobin* v *United States,* 306 F2d 279 (1962), cert. denied, 371 U.S. 902 (1962).

20. *Shelton* v *United States,* 404 F2d 1292 (D. C. Cir. 1968), cert. denied, 393 U.S. 1024 (1969).

1. *United States* v *Presser,* 292 F2d 171 (6th Cir. 1961), aff'd. 371 U.S. 71 (1961).

2. *Barry* v *United States ex rel. Cunningham,* 279 U.S. 597, 619 (1929). This case, based on an investigation of a Senator-elect, is discussed at 6 Cannon's Precedents §§ 346–349.

The fact that an alien who had been subpenaed by a House committee was arrested by Immigration and Naturalization Service officers and taken before the committee in their custody did not relieve him of his obligation to testify. Although the issue of legality or illegality of the arrest could be raised in a judicial proceeding, it was irrelevant to the committee proceedings. *Eisler* v *United States,* 170 F2d 273 (D.C. Cir. 1948), cert. dismissed, 338 U.S. 883 (1949).

3. *Mins et al.* v *McCarthy,* 209 F2d 307 (D.C. Cir. 1953).

Two recent cases discussing injunctions against compliance with congressional requests or subpenas will be treated in more detail in supplements to this edition. In an action by Ashland Oil, Inc., to enjoin the Federal Trade Commission from furnishing certain trade secrets to a congressional subcommittee, the Court of Appeals for the District of Columbia held that the Federal Trade Commission was not precluded by statute from transmitting trade secrets to Congress pursuant either to subpena or formal request. *Ashland Oil, Inc.* v *Federal Trade Commission,* 548 F2d 977 (D.C. Cir. 1976). In the other case, the Justice Department sought to enjoin American Telephone & Telegraph Co. from complying with a subpena issued by the Chairman of the House Committee on Interstate and Foreign Commerce. The information sought pursuant to the subpena related to electronic surveillance, and the executive branch contended that disclosure of the information created a risk to national security. The District Court for the District of Columbia having issued an injunction against compliance with the congressional subpena, the U.S. Court of Appeals for the District of Columbia remanded the case without decision on the merits and called for further negotiations between the parties. *United States* v *American Telephone & Telegraph Co.*, 551 F2d 384 (D.C. Cir. 1976). The Court further directed the District Court to modify the injunction with respect to information regarding domestic surveillance, disclosure of which had not been found to create an undue risk to national security.

Habeas Corpus

§ 16.1 A subcommittee may petition a court to issue a writ of habeas corpus to compel attendance of an incarcerated person at a committee hearing.

On Sept. 10, 1973,[4] the fact that the Special Subcommittee on Intelligence of the Committee on Armed Services had petitioned a U.S. district court to issue a writ of habeas corpus ad testificandum to compel the attendance of a witness, G. Gordon Liddy, before a hearing of the subcommittee, was revealed to the House in House Report No. 93–453.

BACKGROUND

At the time of the subcommittee hearings, Mr. Liddy was in confinement in the District of Columbia Jail as the result of his conviction on the Watergate breakin. Accordingly, the subcommittee petitioned Chief Judge John J. Sirica of the United States District Court for the District of Columbia for a Writ of Habeas Corpus Ad Testificandum as the only means of obtaining Mr. Liddy's presence before the subcommittee. In his discretion Judge Sirica signed that petition and an order was delivered to the United States Marshal for Mr. Liddy's appearance before the subcommittee on July

4. 119 CONG. REC. 28951, 93d Cong. 1st Sess.

20, 1973. [See Appendix 1, pp. 16–17.] Mr. Liddy appeared as ordered.

Subpena as Prerequisite for Contempt

§ 16.2 The House and not the Chair determines whether persons who have not been subpenaed may be cited for refusal to produce organizational books, records, and papers.

On Mar. 28, 1946,[5] Speaker Sam Rayburn, of Texas, responded to a point of order regarding authority to entertain a resolution citing for contempt persons who had not been subpenaed.

MR. [JOHN S.] WOOD [of Georgia]: Mr. Speaker, by direction of the Committee on Un-American Activities, I present a privileged report and ask that it be read. . . .

COMMITTEE ON UN-AMERICAN ACTIVITIES

THE SPEAKER: The Clerk will read the report of the Committee on Un-American Activities.

The Clerk read as follows:

PROCEEDING AGAINST DR. EDWARD K. BARSKY AND OTHERS

Mr. Wood, from the Committee on Un-American Activities, submitted the following report:

The Committee on Un-American Activities as created and authorized by the House of Representatives by House Resolution 5 of the Seventy-ninth Congress, caused to be issued a subpena to Dr. Edward K. Barsky, chairman of the Joint Anti-Fascist Refugee Committee, an unincorporated organization with offices at 192 Lexington Avenue, New York, N.Y. The said subpena required the said person to produce books, papers, and records of the organization for the inspection of your committee; the subpena is set forth as follows: . . .

In his appearance before the committee, Dr. Barsky stated that he was unable to produce the subpenaed materials because that authority had not been granted by the members of the executive board.

At the request of a committee member, he supplied a list of names and addresses of board members. This list appeared in the report and resolution. Thereafter the following resolution was considered:

MR. WOOD: Mr. Speaker, I offer a privileged resolution (H. Res. 573) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the Speaker of the House of Representatives certify the report of the House Committee on Un-American Activities as to the willful and deliberate refusal of the following persons to produce before the said committee for its inspection the books, papers, and records of an unincorporated organization known as the Joint Anti-Fascist Refugee Committee, with offices at 192 Lexington Avenue, New York, N. Y., together with all the facts relating

5. 92 CONG. REC. 2743–45, 79th Cong. 2d Sess.

thereto, under seal of the House of Representatives, to the United States attorney for the District of Columbia to the end that the said persons named below may be proceeded against in the manner and form provided by law:

Dr. Edward K. Barsky, 54 East Sixty-first Street, New York City.

Dr. Jacob Auslander, 288 West Eighty-sixth Street, New York City.

Prof. Lyman R. Bradley, New York University, New York City.

Mrs. Marjorie Chodorov, 815 Park Avenue, New York City. . . .

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a point of order.

THE SPEARER: The gentleman will state it.

MR. MARCANTONIO: Mr. Speaker, I make a point of order against the resolution on the ground that it seeks to have cited by this House individuals who were never subpenaed, and never given an opportunity to appear and state whether or not they would or could comply with a subpena. Under those circumstances, I maintain that insofar as those individuals are concerned this matter is not properly before the House, in that neither the resolution nor the report from the committee sets forth that these individuals were subpenaed, with the exception of Dr. Barsky. None of the others were subpenaed; none of the others came before the committee and were accorded even an opportunity to say "yes" or "no" as to whether or not they had authority or control over the records and books and whether they could or would comply with the committee's subpena. For that reason, as far as they are concerned, this resolution is not properly before this House.

THE SPEAKER: The Chair is ready to rule.

The report and the resolution are both before the House for its determination, and not the determination of the Chair. The Chair overrules the point of order.[6]

D. AUTHORITY IN CASES OF CONTEMPT

§ 17. In General

The House may try a contumacious witness at its bar[7] or pur-

6. See § 17.4, infra, discussing adoption of an amendment deleting names of all persons who had not been subpenaed.

7. *Parliamentarian's Note:* No contumacious witness has been tried at the bar of the House or Senate between 1936 and 1973. In *Groppi* v *Leslie,* 404 U.S. 496 (1972), a decision which reviewed an action of the Wisconsin legislature but nonetheless rested on congressional precedents, the U.S. Supreme Court held that a witness may not be punished for contempt unless he has been accorded

sue procedures authorized by 2 USC §§ 192–194, criminal contempt statutes passed in 1857. These statutes reflected the need for more effective sanctions and a more appropriate forum to compel disclosure from a recalcitrant witness than merely ordering him held in custody until he agreed to testify. A major shortcoming of trial before the bar, in addition to the inappropriateness of the House's procedures when functioning as a judicial tribunal, and the lack of precedent on due process requirements, was that the witness could be imprisoned only as long as the House remained in session.[8] The statute designates as a misdemeanor willful[9] default or refusal to answer any question[10] pertinent[11] to the question under inquiry[12] by any person who has been summoned as a witness[13] by authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress. Punishment for violation of the statute is a fine of not more than $1,000 nor less than $100, and imprisonment for not less than one month nor more than 12 months. This statute has withstood constitutional challenges. The Supreme Court[14] rejected the contention that reference to "any" matter under inquiry was fatally defective because it was unlimited in its extent. In reaching this conclusion the court stated that, ". . . statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible . . . avoid an unjust or absurd conclusion" and interpreted the word "any" to apply to ". . . matters within the jurisdiction of the two Houses of Congress, before them for consideration and proper for their action, to questions perti-

due process of law in a proceeding that leads to a finding of guilt. Although a legislative body does not have to accord all the procedural rights that a court must accord, it must grant notice and an opportunity for a hearing.

8. This description of the statute is taken from *Watkins* v *United States,* 354 U.S. 178, 207 n. 45 (1957).

9. See § 7, supra, for a discussion of willfulness as it relates to intent of the witness.

10. See § 20, infra, for a discussion of particular conduct as contumacious.

11. See § 6, supra, for a discussion of pertinence.

12. See § 1, supra, for a discussion of the permissible scope of legislative inquiry.

13. See § 16, supra, for a discussion of summoning witnesses.

14. *In re Chapman,* 166 U.S. 661, 667 (1897). 2 Hinds' Precedents § 1614.

nent thereto, and to facts or papers appearing therein." In the same case the court found that the adoption of a statute designed to aid each House of Congress in the discharge of its constitutional functions did not constitute an improper delegation of power to punish contempt.

A court of appeals[15] rejected the argument that 2 USC § 192 violated the "necessary and proper" clause of article 1, section 8, because the inherent power of Congress to compel attendance by civil contempt was a better means to achieve the legitimate congressional end of obtaining information than was criminal contempt. The court found that the decision to add criminal contempt powers to its inherent powers to insure the cooperation of witnesses provided a rational basis on which to enact 2 USC § 192. It was unwilling to strike down a means reasonably calculated to accomplish a valid congressional end simply because someone could conceive of an arguably better means to accomplish that end.

2 USC § 193 provides that no witness is privileged to refuse to testify to any fact, or to produce any paper on the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous. 2 USC § 194 establishes a procedure for certification of a contempt citation to the appropriate U.S. Attorney.[16]

The following steps precede judicial proceedings under 2 USC §§ 192–194: (1) approval by the committee, (2) calling up and reading the committee report on the floor,[17] (3) either (if Congress is in session) House approval of a resolution authorizing the Speaker to certify the report to the U.S. Attorney for prosecution, or[18] (if Congress is not in session) an independent determination by the Speaker to certify the report,[19] (4) certification by the Speaker to the appropriate U.S. Attorney for prosecution.[20]

The remaining sections in this chapter deal with proceedings

15. *United States* v *Fort*, 443 F2d 670, 676 (D.C. Cir. 1970), cert. denied, 403 U.S. 932 (1971).

16. See § 22, infra, for a discussion of this statute.

17. See §§ 20.1, 20.3, 20.5, 20.7, 20.9, infra, for examples.

18. See §§ 20.2, 20.4, 20.6, 20.8, 20.10, and 22.1, infra, for examples.

19. See summary and analysis in § 22, infra, for a discussion of *Wilson, et al.* v *United States*, which held that the Speaker, acting in the place of the House, must exercise independent judgment.

20. See all precedents in § 22, infra, for examples.

after a committee has voted to cite a witness for contempt and prior to grand jury action.(1)

Recommittal

§ 17.1 The House may recommit a resolution certifying the contempt of a committee witness to the committee which reported the contumacious conduct.

On July 13, 1971,(2) the House on a roll call vote recommitted a resolution certifying contempt of a witness before the Committee on Interstate and Foreign Commerce.(3)

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I offer a privileged resolution, by direction of the Committee on Interstate and Foreign Commerce, and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 534

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Interstate and Foreign Commerce of the House of Representatives as to the contumacious conduct of the Columbia Broadcasting System, Incorporated, and of Dr. Frank Stanton, its President, in failing and refusing to produce certain pertinent materials in compliance with a subpena *duces lecum* of a duly constituted subcommittee of said committee served upon Dr. Stanton and the Columbia Broadcasting System, Incorporated, and as ordered by the subcommittee, together with all the facts in connection therewith, under the seal of the House of Representatives, to the United States Attorney for the District of Columbia, to the end that Dr. Frank Stanton and the Columbia Broadcasting System, Incorporated, may be proceeded against in the manner and form provided by law.

THE SPEAKER:(4) The gentleman from West Virginia (Mr. Staggers) is recognized for one hour. . . .

MR. STAGGERS: Mr. Speaker, I move the previous question on the resolution.

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1. For earlier precedents, see 2 Hinds' Precedents §§ 1597–1640, 3 Hinds' Precedents §§ 1666–1724, and 6 Cannon's Precedents §§ 332–353. For other materials, see Goldfarb, Ronald L., The Contempt Power, Columbia University Press, N.Y., 1963 (this work also discusses contempt of judicial proceedings); Sky, T., Judicial Reviews of Congressional Investigations—Is There an Alternative to Contempt? 31 Geo. Wash. L. Rev. 399 (1962); Beck, Carl, Contempt of Congress, A Study of the Prosecutions Initiated by the Committee on UnAmerican Activities, 1945–1957, The Hauser Press, New Orleans, 1959; and Willis, Power of Legislative Bodies to Punish for Contempt, 2 Ind. L. J. 61 (1957).

2. 117 CONG. REC. 24723, 24752, 24753, 92d Cong. 1st Sess.

3. The Committee on Interstate and Foreign Commerce recommended the contempt citation by a vote of 25 to 23, in an executive session on July 1, 1971. See 117 CONG. REC. 24723, 92d Cong. 1st Sess., July 13, 1971.

4. Carl Albert (Okla.).

The previous question was ordered.

MOTION TO RECOMMIT OFFERED BY MR. KEITH

MR. [HASTINGS] KEITH [of Massachusetts]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER: Is the gentleman opposed to the resolution?

MR. KEITH: I am, Mr. Speaker.

THE SPEAKER: The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. Keith moves to recommit House Resolution 534 to the Committee on Interstate and Foreign Commerce.

THE SPEAKER: Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

THE SPEAKER: The question is on the motion to recommit.

The question was taken; and on a division (demanded by Mr. Keith), there were—ayes 151, noes 147.

MR. STAGGERS: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered. . . .

The question was taken; and there were—yeas 226, nays 181, answered "present" 2, not voting 24, as follows: . . .

So the motion to recommit was agreed to.

§ 17.2 The House rejected a motion to recommit to a select committee a privileged resolution from the Committee on Un-American Activities which authorized the Speaker to certify a contempt citation to the U.S. Attorney.

On Oct. 18, 1966,[5] the House by a roll call vote of 90 yeas, 181 nays, and 161 not voting, rejected a motion to recommit to a select committee a privileged resolution authorizing the Speaker to certify a committee report to the U.S. Attorney. The report cited Milton Mitchell Cohen in contempt for refusal to answer questions before the Committee on Un-American Activities. The select committee would have been instructed to examine the sufficiency of the citation.[6]

PROCEEDINGS AGAINST MILTON MITCHELL COHEN

MR. [EDWIN E.] WILLIS [of Louisiana]: Mr. Speaker, I offer a privileged resolution (H. Res. 1060) from the Committee on Un-American Activities and ask for its immediate consideration.

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5. 112 CONG. REC. 27448, 27484, 27485, 89th Cong. 2d Sess.

6. See also, for example, 112 CONG. REC. 27511, 27512, 89th Cong. 2d Sess., Oct. 18, 1966, for rejection on a roll call vote of 54 yeas to 182 nays of a motion by Mr. Sidney R. Yates (Ill.), to recommit to a select committee privileged H. Res. 1062, authorizing the Speaker to certify to a U.S. Attorney H. REPT. No. 2306, relating to the refusal of Dr. Jeremiah Stamler to testify before the Committee on Un-American Activities.

The Clerk read the resolution, as follows:

H. RES. 1060

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of Representatives as to the refusals of Milton Mitchell Cohen to answer questions pertinent to the subject under inquiry before a duly authorized subcommittee of the said Committee on Un-American Activities, and his departure without leave, together with all the facts in connection therewith, under the seal of the House of Representatives, to the United States attorney for the northern district of Illinois, to the end that the said Milton Mitchell Cohen may be proceeded against in the manner and form provided by law. . . .

The previous question was ordered.

THE SPEAKER:[7] The question is on the resolution.

For what purpose does the gentleman from Massachusetts rise?

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER: Is the gentleman opposed to the resolution?

MR. CONTE: I am, Mr. Speaker.

THE SPEAKER: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Conte moves to recommit the resolution of the Committee on Un-American Activities to a select committee of seven Members to be appointed by the Speaker with instructions to examine the sufficiency of the contempt citations under existing rules of law and relevant judicial decisions and thereafter to report it back to the House, while Congress is in session, or, when Congress is not in session, to the Speaker of the House, with a statement to its findings.[8]

THE SPEAKER: Without objection, the previous question is ordered.

The question is on the motion to recommit.

The question was taken.

MR. CONTE: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Doorkeeper will close the doors; the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 90, nays 181, not voting 161, as follows: . . .

The result of the vote was announced as above recorded.

The doors were opened.

THE SPEAKER: The question is on the adoption of the resolution.

The question was taken, and the Speaker announced that the ayes appeared to have it.

MR. [JAMES C.] CLEVELAND [of New Hampshire]: Mr. Speaker, on that I demand the yeas and nays.

7. John W. McCormack (Mass.).

8. See 112 CONG. REC. 27461, 27462, 89th Cong. 2d Sess., Oct. 18, 1966, for a statement in which Mr. Conte indicated that a reason for the motion to recommit was the lawsuit filed by the witness, Milton Mitchell Cohen, and others challenging the constitutionality of the authority and procedures of the Committee on Un-American Activities.

The yeas and nays were refused.

So the resolution was agreed to.

A motion to reconsider was laid on the table.

Divisibility

§ 17.3 The Speaker stated that a resolution directing the Speaker to certify a report citing certain witnesses for contempt for refusing to testify and submit subpenaed materials was not divisible.

On May 28, 1936,[9] Speaker Joseph W. Byrns, of Tennessee, responded to a parliamentary inquiry regarding divisibility of a resolution authorizing the Speaker to certify to the U.S. Attorney House Report No. 2857.

MR. [C. JASPER] BELL [of Missouri]: Mr. Speaker, by direction of the select committee, I now present a privileged resolution and send it to the Clerks desk and ask that it be read.

The Clerk read as follows:

HOUSE RESOLUTION 532

Resolved, That the Speaker of the House of Representatives certify the report of the Select Committee to Investigate Old Age Pension Plans as to the willful and deliberate refusal of Francis E. Townsend, Clinton Wunder, and John B. Kiefer to testify before said committee, together with all the facts in connection therewith, under seal of the House of Representatives, to the United States attorney for the District of Columbia, to the end that the said Francis E. Townsend, Clinton Wunder, and John B. Kiefer may be proceeded against in the manner and form provided by law. . . .

THE SPEAKER: The Chair recognizes the gentleman from Missouri.

MR. [EVERETT M.] DIRKSEN [of Illinois]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. DIRKSEN: Is the resolution divisible as to the three gentlemen named?

THE SPEAKER: It is not.[10]

Deletion of Names of Persons Not Subpenaed

§ 17.4 The House amended a resolution citing persons for contempt by deleting the names of all who had not been subpenaed, leaving only the name of Dr. Edward K. Barsky.

On Mar. 28, 1946,[11] the House by voice vote agreed to an amendment deleting the names of all persons who had not been subpenaed from House Resolution 573, authorizing the Speaker to certify to the U.S. Attorney the report of the Committee on Un-American

9. 80 CONG REC. 8222, 74th Cong. 2d Sess.

10. See § 17.4, infra, in which all but one of the names of persons listed in such a resolution were deleted by amendment.

11. 92 CONG. REC. 2745, 2749, 79th Cong. 2d Sess.

Activities regarding refusal to produce requested records, books, and papers.

MR. [JOHN S.] WOOD [of Georgia]: Mr. Speaker, I offer a privileged resolution (H. Res. 573) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the Speaker of the House of Representatives certify the report of the House Committee on Un-American Activities as to the willful and deliberate refusal of the following persons to produce before the said committee for its inspection the books, papers, and records of an unincorporated organization known as the Joint Anti-Fascist Refugee Committee, with offices at 192 Lexington Avenue, New York, N.Y., together with all the facts relating thereto, under seal of the House of Representatives, to the United States attorney for the District of Columbia to the end that the said persons named below may be proceeded against in the manner and form provided by law:

Dr. Edward K. Barsky, 54 East Sixty-first Street, New York City.

Dr. Jacob Auslander, 286 West Eighty-sixth Street, New York City.

Prof. Lyman R. Bradley, New York University, New York City.

Mrs. Marjorie Chodorov, 815 Park Avenue, New York City. . . .

MR. WOOD: Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Wood: Strike from the resolution the names of all individuals except that of Edward K. Barsky.

The amendment was agreed to.

Parliamentarian's Note: Dr. Barsky was the only person who had been subpenaed. All the others, members of the executive board of the organization, were cited in the report and resolution because the board refused to permit Dr. Barsky to produce the subpenaed materials. Mr. Wood was Chairman of the Committee on Un-American Activities.(12)

§ 18. Time for Consideration

Reports

§ 18.1 A report from a committee relating to the refusal of a witness to produce certain subpenaed documents is privileged; it is presented and read before a resolution is offered directing the Speaker to certify the refusal to a U.S. Attorney.

On Aug. 23, 1960,(13) Speaker Sam Rayburn, of Texas, indicated the order in which to read a report and resolution relating to contempt of a witness.

MR. [EMANUEL] CELLER [of New York]: Mr. Speaker, I rise to a question

12. See 92 CONG. REC. 2744, 2745, 79th Cong. 2d Sess., for the text of the report and § 19.4, infra, for a discussion of this incident as it relates to a point of order challenging citation of persons who had not been subpenaed.

13. 106 CONG. REC. 17278, 86th Cong. 2d Sess.

of the privilege of the House and offer a resolution which I send to the Clerk's desk along with a privileged report (Rept. No. 2117) of the Committee on the Judiciary detailing the facts concerning the contumacious conduct of the subject of the resolution.

THE SPEAKER: The Chair would think that the gentleman would desire to file the report first and then offer the resolution.

MR. CELLER: The report has been filed, Mr. Speaker.

THE SPEAKER: The Clerk will read the report, then.[14]

§ 18.2 Because a report on the contemptuous conduct of a witness before a committee gives rise to a question of privileges of the House (relating both to the implied constitutional power of the House and its authority under Rule IX to dispose directly of questions affecting the dignity and integrity of House proceedings), it is privileged for consideration immediately upon presentation to the House.

On July 13, 1971,[15] Speaker Carl Albert, of Oklahoma, ruled that House Report No. 92–349, citing the Columbia Broadcasting System, Inc. and its president, Frank Stanton, for contempt for refusal to submit subpenaed materials to the Committee on Interstate and Foreign Commerce, was privileged under Rule IX,[16] and consequently could be considered on the same day it was reported notwithstandIng the requirement of Rule XI clause 27(d)(4),[17] that reports from committees be available to Members for at least three calendar days prior to their consideration.

PROCEEDING AGAINST FRANK STANTON AND COLUMBIA BROADCASTING SYSTEM, INC.

MR. [HARLEY O.] STAGGERS [of West Virginia]: I rise to a question of the

14. This report cited Austin J. Tobin, executive director of the Port Authority of New York for contempt for his refusal to submit subpenaed documents before Subcommittee No. 5 of the Committee on the Judiciary. The resolution, H. Res. 606, authorized the Speaker to certify the report to a U.S. Attorney. See 106 CONG. REC. 17281, 86th Cong. 2d Sess., Aug. 23, 1960, for the text of this resolution and 106 CONG. REC. 17313 (H. REPT. No. 2120) and 17316 (H. Res. 607), 86th Cong. 2d Sess., Aug. 23, 1960, for similar proceedings against S. Sloan Colt, chairman of the board of commissioners of the Authority; and 106 CONG. REC. 17316 (H. REPT. No. 2121) and 17319 (H. Res. 608), 86th Cong. 2d Sess., Aug. 23, 1960, for similar proceedings against Joseph G. Carty, secretary of the authority.

15. 117 CONG. REC. 24720, 24721, 92d Cong. 1st Sess.

16. House Rules and Manual § 661 (1973).

17. House Rules and Manual § 735(d)(4) (1973).

privilege of the House, and I submit a privileged report (Report No. 92–349).

The Clerk proceeded to read the report.

MR. [SAM M.] GIBBONS [of Florida]: Mr. Speaker, I want to raise a point of order against the consideration of this matter at this time.

THE SPEAKER: The gentleman will state his point of order.

MR. GIBBONS: Mr. Speaker, I rise to object to the consideration of this matter at this time in that I believe that it violates clause 27, subparagraph (d)(4) of rule XI of the Rules of the House of Representatives.

Mr. Speaker, I refer to the language contained on page 381 of the House Rules and Manual, 92d Congress. I would call your attention to the fact that the rule, subparagraph (d)(4), clause 27 of rule XI was adopted last year in the Legislative Reorganization Act, and was readopted earlier this year.

Mr. Speaker, I think it would be best if I read just a portion of the rule, and this rule reads as follows:

> A measure or matter reported by any committee (except the Committee on Appropriations, the Committee on House Administration, the Committee on Rules, and the Committee on Standards of Official Conduct) shall not be considered in the House unless the report of that committee upon that measure or matter has been available to the Members of the House for at least three calendar days (excluding Saturdays, Sundays, and legal holidays) prior to the consideration of that measure or matter in the House.

Now, there is some more to that rule. The next sentence goes on to deal with the hearings of the committee, but then there is an exception to that rule, and it is:

> This subparagraph shall not apply to—
>
> (A) any measure for the declaration of war or the declaration of a national emergency, by the Congress; and
>
> (B) any executive decision, determination, or action which would become, or continue to be, effective unless disapproved or otherwise invalidated by one or both Houses of Congress.

Mr. Speaker, that rule was adopted last year. I have examined the committee report. It is obvious the reasoning for its adoption was to prevent the premature or rapid or precipitous consideration of matters such as this kind, even though they dealt with a matter of privilege. The matter of privileged matters is specifically not excepted from this rule because I think many Members helping to frame these rule changes last year felt that the Congress had not acted wisely on some of these things that have come up pretty fast.

The committee report, which is still classified as a committee print, without any number, was not available until 10:30 this morning. It is 272 pages long. I presume it is well written, I have not had a chance to read it, and I doubt that very many other Members have had a chance to read it in full.

I would hope that the Chair would sustain this point of order. I do not believe there is any grave emergency. I do not believe that the person sought to be cited, or the organization sought to be cited are about to leave the country. I would hope that the House could

consider this matter in a more rational manner and after it has had the opportunity to read and examine the report.

Mr. Speaker, I realize that some may say a matter of this sort is a matter of privilege and, therefore, is excepted from the rule. It is my contention, Mr. Speaker, that the matter of privilege was specifically not excluded from the requirement of a 3-day layover for the printing of the report but that the Committees on Appropriations, House Administration, Rules, and Standards of Official Conduct—those being the committees that generally deal with matters of privilege—were set down under specific exception and that it was never intended that citations such as this could be considered in such a preemptive type of procedure as is now about to take place.

MR. [OGDEN R.] REID of New York: Mr. Speaker, will the gentleman yield?

MR. GIBBONS: l yield to the gentleman.

MR. REID of New York: Mr. Speaker, in furtherance of the point that the gentleman is making, if the Chair will look at rule IX, it states in the rule:

> Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings;

I would say, Mr. Speaker, that the 3-day rule is an important principle, uniquely relevant to the Constitutional question. This is the very idea of the 3-day rule and I believe that today to rush through an important question does not comport with an enlightened discharge of our responsibility.

Mr. Speaker, I hope the point of order is upheld.

THE SPEAKER: Does the gentleman from West Virginia (Mr. Staggers) desire to be heard on the point of order?

MR. STAGGERS: I do, Mr. Speaker.

THE SPEAKER: The gentleman is recognized.

MR. STAGGERS: Mr. Speaker, rule IX provides that "Question of privilege shall be, first, those affecting the rights of the House collectively"—as the gentleman from New York has just read—"its safety, dignity and the integrity of its proceedings."

Privileges of the House includes questions relating to those powers to punish for contempt witnesses who are summoned to give information.

House Rule 27(d) of rule XI the so-called 3-day rule, clearly does not apply to questions relating to privileges of the House. The rule applies only to simple measures or matters reported by any committee. It excludes matters arising from the Committee on Appropriations, House Administration, Rules, and Standards of Official Conduct.

It is clear that the terms "measure" or "matter" as used in rule 27(d) do not apply to questions of privilege.

To apply it in such a way would utterly defeat the whole concept of the question of privilege.

Too, a privileged motion takes precedence over all other questions except the motion to adjourn.

The fact that the 3-day rule excludes routine matters from the Appropriations, Administration, Rules, and Standards of Official Conduct Committees clearly shows that the 3-day rule does not apply to privileged questions.

If the rule were meant to apply to questions of privilege, it surely would not make exceptions for routine business coming from regular standing committees.

THE SPEAKER: The Chair is ready to rule.

The Chair appreciates the fact that the gentleman from Florida has furnished him with a copy of the point of order which he has raised and has given the Chair an opportunity to consider it.

The gentleman from Florida (Mr. Gibbons) makes a point of order against the consideration of the report from the Committee on Interstate and Foreign Commerce on the grounds that it has not been available to Members for at least 3 days as required by clause 27(d)(4) of rule XI. The Chair had been advised that such a point of order might be raised and has examined the problems involved.

The Chair has studied clause 27(d)(4) of rule XI and the legislative history in connection with its inclusion in the Legislative Reorganization Act of 1970.

That clause provides that "a matter shall not be considered in the House unless the report has been available for at least 3 calendar days."

The Chair has also examined rule IX, which provides that:

> Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings . . . and shall have precedence of all other questions, except motions to adjourn.

Under the precedents, a resolution raising a question of the privileges of the House does not necessarily require a report from a committee. Immediate consideration of a question of privilege of the House is inherent in the whole concept of privilege. When a resolution is presented, the House may then make a determination regarding its disposition.

When a question is raised that a witness before a House committee has been contemptuous, it has always been recognized that the House has the implied power under the Constitution to deal directly with such conduct so far as is necessary to preserve and exercise its legislative authority. However, punishment for contemptuous conduct involving the refusal of a witness to testify or produce documents is now generally governed by law—Title II, United States Code, sections 192–194—which provides that whenever a witness fails or refuses to appear in response to a committee subpena, or fails or refuses to testify or produce documents in response thereto, such fact may be reported to the House. Those reports are of high privilege.

When a resolution raising a question of privilege of the House is submitted by a Member and called up as privileged, that resolution is also subject to immediate disposition as the House shall determine.

The implied power under the Constitution for the House to deal directly with matters necessary to preserve and exercise its legislative authority; the provision in rule IX that questions of privilege of the House shall have precedence of all other questions; and the fact that the report of the committee has been filed by the gentleman from West Virginia as privileged—all refute the argument that the 3-day layover requirement of clause 27(d)(4) applies in this situation.

The Chair holds that the report is of such high privilege under the inherent constitutional powers of the House and

under rule IX that the provisions of clause 27(d)(4) of rule XI are not applicable.

Therefore, the Chair overrules the point of order.

The Clerk will continue to read the report.

Point of Order Regarding House Trial

§ 18.3 The point of order was made that the House should itself try contempt cases, rather than certify such matters to the courts; the report which was objected to having just been read, the Speaker indicated that submission of such issue (which is one to be decided by the House) should be postponed until a resolution was actually presented for consideration by the House.

On May 28, 1936,[18] after the reading of a privileged report from the Select Committee on Investigating Old Age Pensions, House Report No. 2857, regarding contempt of Dr. Francis E. Townsend, president and founder, and two members of the national board of directors of Old Age Revolving Pensions, Ltd., for failure to provide subpenaed testimony and documents, Speaker Joseph W. Byrns, of Tennessee, responded to a point of order regarding the procedure to try and punish contempt.

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, I make the point of order that under the Constitution of the United States the House of Representatives of the legislative branch is a separate and distinct department of government from the judiciary, or the courts, that this is undoubtedly a contempt of the House of Representatives, the legislative branch, and is a contempt that should be tried and punished, not by the courts, but by the House of Representatives itself. We ought not to pass the buck to the courts. We ought to assume the responsibility ourselves.

I admit that all three witnesses clearly are in contempt, and deserve punishment and that the House ought to try these three witnesses, convict them of contempt, and punish all three of them with a heavy fine and send them all to jail, until they can have some respect for the institutions of their country. I therefore make the point of order that the House of Representatives should try its own contempt proceedings and fix its own punishment.

THE SPEAKER: That matter is not under discussion now. This is simply a report from a select committee which has been read and which has been ordered printed. The Chair recognizes the gentleman from Missouri.

It should be noted that the Speaker did not indicate that the point of order, even if timely, would have been valid. Rather, the Speaker implied that such

18. 80 CONG. REC. 8221, 74th Cong. 2d Sess.

issues were to be determined by the House by voting on whatever resolution was presented to the House.[19]

Resolutions

§ 18.4 A resolution directing the Speaker to certify to the U.S. Attorney the refusal of a witness to respond to a subpena issued by a House committee may be offered from the floor as privileged and may be disposed of immediately.

On July 13, 1971,[20] House Resolution 534, authorizing the Speaker to certify to the U.S. Attorney a report citing the contemptuous refusal of the Columbia Broadcasting System and its president, Frank Stanton, to respond to a subpena duces tecum issued by the Committee on Interstate and Foreign Commerce, and House Report No. 92–349, citing this contempt, were offered from the floor. The resolution was considered as privileged by the Speaker.[1]

19. See § 19.2, infra, for a discussion of the proceedings as they relate to the authority of a committee to report the contempts of witnesses.

20. 117 CONG. REC. 24720, 24721, 24723, 92d Cong. 1st Sess.; see § 18.2, supra, for the text of the point of order and ruling regarding the privileged status of the report.

1. Carl Albert (Okla.).

§ 18.5 Because it is a matter of high privilege, a resolution directing the Speaker to certify an individual in contempt may be called up at any time.

On Aug. 2, 1946,[2] Speaker Sam Rayburn, of Texas, responded to a parliamentary inquiry regarding the privileged status of a resolution authorizing the Speaker to certify an individual in contempt.

PROCEEDING AGAINST RICHARD MORFORD

THE SPEAKER: For what purpose does the gentleman from Mississippi rise?

MR [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, I send to the Clerk's desk a privileged resolution and ask that it be read.

THE SPEAKER: The Clerk will read the resolution.

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MARCANTONIO: Mr. Speaker, has not the Speaker the power to determine the order of business by recognizing or not recognizing gentlemen requesting the consideration of various pieces of legislation? I make that parliamentary inquiry because there is very important business pending before the House—social security, appro-

2. 92 CONG. REC. 10746, 79th Cong. 2d Sess.

priations for terminal-leave pay, and for automobiles for amputees—and I see no reason why this resolution should be given preference.

THE SPEAKER: It would not be given preference if it were an ordinary resolution, but this is a resolution of high privilege.

Calendar Wednesday

§ 18.6 A report of a committee citing a witness for contempt was considered on Calendar Wednesday.

On June 26, 1946,[3] Calendar Wednesday, the House considered a privileged report from the Committee on Un-American Activities, House Report No. 2354, citing Corliss G. Lamont, chairman of the National Council of American-Soviet Friendship, Inc., for contempt for his refusal to produce subpoenaed materials.[4]

§ 19. Matters Decided by House

Content of Report

§ 19.1 The House, not the Chair, determines whether a report citing an individual for refusal to produce subpenaed materials must contain the full testimony or only selected portions thereof.

On June 26, 1946,[5] Speaker Sam Rayburn, of Texas, responded to a point of order regarding the sufficiency of a hearing transcript in a committee report citing a I witness for contempt.

PROCEEDINGS AGAINST CORLISS G. LAMONT

MR. [JOHN S.] WOOD [of Georgia]: Mr. Speaker, by direction of the Committee on Un-American Activities, I present a privileged report and ask that it be read.

The Clerk read as follows:

> The Committee on Un-American Activities, as created and authorized by the House of Representatives by House Resolution 5 of the Seventy-ninth Congress, caused to be issued a subpena to Corliss G. Lamont, chairman of the National Council of American-Soviet Friendship, Inc., with offices at 114 East Thirty-second Street, New York City, N.Y. The said subpena required the said person to produce books, papers, and records of the organization for the inspection of your committee. The subpena is set forth as follows: . . .
>
> In response to the said subpena the said Corliss Lamont appeared before your committee on February 6, 1946, and your committee then

3. See 92 CONG. REC. 7589–91, 79th Cong. 2d Sess., for the text of the report.

4. This report is discussed at § 19.1, infra.

5. 92 CONG. REC. 7589–91, 79th Cong. 2d Sess. See § 18.6, supra, for a discussion of this instance as it relates to consideration on Calendar Wednesday.

and there demanded the production of the said books, papers, and records, and the said Lamont refused to produce as required by the said subpena. The said Lamont was duly sworn by the chairman and gave his testimony under oath. The material parts of his testimony follow: . . .

MR. [VITO] MARCANTONTO [of New York]: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. MARCANTONIO: Mr. Speaker, I make the point of order against the report on the ground that it does not contain all of the transcript of what transpired before the committee with respect to this witness. On page 2 of the report, at the end of the first paragraph, the committee concedes that this is not a full transcript. It states: "The material parts of his testimony follow." In other words, the House has before it only that portion of the testimony which the committee conceives to be material. This deprives the House of having the full proceedings before it; consequently, the House will be asked to vote on whether or not this witness is to be cited for contempt and whether or not the House is to recommend prosecution of this witness, without having the full story before it, without having all of the testimony before it. All that is given is part of the testimony which the committee describes as material.

I respectfully submit in support of my point of order, Mr. Speaker, that what is material and what is not material should be determined by the House, because the House has to pass on this question and the majority of the Members of this House must vote in the affirmative in order to recommend these contempt proceedings. To do so it must have the entire transcript before it. Consequently I submit that the report is defective and that the report should be referred back to the committee by the Speaker, directing it to produce the full transcript of what transpired so that the House may have the entire proceedings before it before the House Members cast their votes.

THE SPEAKER: The Chair thinks that the gentleman from New York [Mr. Marcantonio] has stated the point exactly, and that is that this is not a matter for the Chair to pass upon but is a matter for the House to pass upon. The Chair overrules the point of order.

Authority of Committee

§ 19.2 Whether a committee exceeded its authority in making a report citing certain recalcitrant witnesses in contempt was held to be a matter for the House to decide, and not a matter to be decided on the basis of a point of order raised against submission of the report.

On May 28, 1936,[6] Speaker Joseph W. Byrns, of Tennessee, responded to a point of order regarding authority to report contemptuous conduct.

THE TOWNSEND OLD-AGE PENSION PLAN

MR. [C. JASPER] BELL [of Missouri]: Mr. Speaker, by direction of the Select

6. 80 CONG. REC. 8219–22, 74th Cong. 2d Sess.

Committee Investigating Old Age Pensions, I present a privileged report (Reps. No. 2857) and send it to the Clerk's desk, and ask that the Clerk read it. . . .[7]

MR. [JOSEPH P.] MONAGHAN [of Montana]: . . . Mr. Speaker, I wish to make a point of order.

THE SPEAKER: The gentleman will state his point of order.

MR. MONAGHAN: Mr. Speaker, my point of order goes to the fact that this report is completely out of order.

THE SPEAKER: The gentleman will state his point of order. . . .

MR. MONAGHAN: The point of order I make is that the committee has exceeded its function in the process of the inquiry that the House authorized it to proceed under.

THE SPEAKER: Let the Chair make this statement. That is not under consideration now. This is simply a report of the select committee, and the question as to whether or not the committee has exceeded its authority cannot arise at this time.

MR. MONAGHAN: But the question that the committee has exceeded its authority is involved in the question of whether or not it shall be permitted to make a report of this sort.

THE SPEAKER: The committee is within its right in submitting its report; it is its duty to report what it has done in order that the House may take such action as it determines to take. Therefore, the Chair overrules that point of order.

An appeal from the decision of the Chair was laid on the table.

Need to Read Testimony

§ 19.3 The House, not the Chair, determines whether a report summarizing the testimony of witnesses and minutes of proceedings of investigative hearings is sufficient on which to base a contempt citation.

On Apr. 16, 1946,[8] Speaker Sam Rayburn, of Texas, responded to a point of order regarding reading of investigative hearing testimony before the House.

JOINT ANTI-FASCIST REFUGEE COMMITTEE

MR. [JOHN S.] WOOD [of Georgia]: Mr. Speaker, by direction of the Committee on Un-American Activities, I present a privileged report and ask that it be read.

The Clerk read as follows:

PROCEEDING AGAINST THE JOINT ANTI-FASCIST REFUGEE COMMITTEE

Mr. Wood, from the Committee on Un-American Activities, submitted the following report:

7. This report citing Dr. Francis E. Townsend, president and founder, and Clinton Wunder and John B. Kiefer, members of the national board of directors of the Old Age Revolving Pensions, Ltd., for contempt for failure to provide subpenaed testimony and documents to the select committee is omitted.

8. 92 CONG. REC. 3761, 3762, 79th Cong. 2d Sess.

> The Committee on Un-American Activities, created and authorized by the House of Representatives by House Resolution 5 of the Seventy-ninth Congress, caused to be issued subpenas to the Joint Anti-Fascist Refugee Committee, an unincorporated organization, with offices at 192 Lexington Avenue, New York, N. Y., service being made upon Helen R. Bryan, executive secretary, and to the members of the executive board of the said organization whose names are listed below. The said subpena required the said persons to produce books, papers, and records for inspection by your committee. The form of the subpenas follows: . . .
>
> Your committee has caused to be printed the testimony of each and every one of the persons named herein given on April 4, 1946, and the said testimony will be filed with the Clerk of the House as an appendix to this report. . . .

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. MARCANTONIO: Mr. Speaker, prefacing my point of order, I would like to make a parliamentary inquiry. Must not a resolution of this nature contain the testimony, or at least a pertinent part of the testimony? It is related in the statement that the testimony is appended, but that testimony has not been read to the House, and for that reason I make the point of order that the resolution is defective.

THE SPEAKER: No resolution has been offered as yet. This is simply the report of the committee.

MR. MARCANTONIO: Very well; in the report we have before us it merely says that the testimony is appended. I submit the House should have that testimony before it. As I understand it, the Members of the House have received, what I hold in my hand, the hearings of April 4. That was received only yesterday. It contains over 100 pages of testimony. This case is very important, and I maintain that the testimony or the relevant portion of the testimony should be read to the House.

THE SPEAKER: The testimony has already been printed, and reference to it is made in this report. The other matter that the gentleman refers to is a question for the House to pass upon, and not the Speaker.

MR. MARCANTONIO: Mr. Speaker, on that point, this is most unusual. Heretofore every report that we have had upon which a resolution for contempt was based, we have read to the House the minutes of the proceedings upon which the contempt citation is requested.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, that never has been done.

THE SPEAKER: That also is within the control of the House. The gentleman from Georgia is recognized.

Citation of Witnesses Absent Subpena

§ 19.4 The House, not the Chair, determines whether persons who have not been subpenaed may be cited for refusal to produce organizational books, records, and papers.

On Mar. 28, 1946,[9] Speaker Sam Rayburn, of Texas, re-

9. 92 CONG. REC. 2744, 2745, 79th Cong. 2d Sess.

sponded to a point of order regarding authority to entertain a resolution citing for contempt persons who had not been subpenaed.(10)

COMMITTEE ON UN-AMERICAN ACTIVITIES

THE SPEAKER: The Clerk will read the report of the Committee on Un-American Activities.

The Clerk read as follows:

PROCEEDING AGAINST DR. EDWARD K. BARSKY AND OTHERS

Mr. Wood, from the Committee on Un-American Activities, submitted the following report:

The Committee on Un-American Activities as created and authorized by the House of Representatives by House Resolution 5 of the Seventy-ninth Congress, caused to be issued a subpena to Dr. Edward K. Barsky, chairman of the Joint Anti-Fascist Refugee Committee, an unincorporated organization with offices at 192 Lexington Avenue, New York, N.Y. The said subpena required the said person to produce books, papers, and records of the organization for the inspection of your committee; the subpena is set forth as follows: . . .

In his appearance before the committee, Dr. Barsky stated that he was unable to produce the subpenaed materials because that authority had not been granted by the members of the executive board. At the request of a committee member he supplied a list of names and addresses of board members. This list appeared in the report and resolution.

MR. [JOHN S.] WOOD [of Georgia]: Mr. Speaker, I offer a privileged resolution (H. Res. 573) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the Speaker of the House of Representatives certify the report of the House Committee on un-American Activities as to the willful and deliberate refusal of the following persons to produce before the said committee for its inspection the books, papers, and records of an unincorporated organization known as the Joint Anti-Fascist Refugee Committee, with offices at 192 Lexington Avenue, New York, N.Y., together with all the facts relating thereto, under seal of the House of Representatives, to the United States attorney for the District of Columbia to the end that the said persons named below may be proceeded against in the manner and form provided by law:

Dr. Edward K. Barsky, 54 East Sixty-first Street, New York City.

Dr. Jacob Auslander, 286 West Eighty-sixth Street, New York City.

Prof. Lyman R. Bradley, New York University, New York City.

Mrs. Marjorie Chodorov, 815 Park Avenue, New York City. . . .

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a point of order.

The SPEAKER: The gentleman will state it.

Mr. MARCANTONIO: Mr. Speaker, I make a point of order against the resolution on the ground that it seeks to have cited by this House individuals

10. See summary and analysis in § 16, supra, for a discussion which indicates that a subpena is not a necessary prerequisite for a contempt conviction.

who were never subpenaed, and never given an opportunity to appear and state whether or not they would or could comply with a subpena. Under those circumstances, I maintain that insofar as those individuals are concerned this matter is not properly before the House, in that neither the resolution nor the report from the committee sets forth that these individuals were subpenaed, with the exception of Dr. Barsky. None of the others were subpenaed; none of the others came before the committee and were accorded even an opportunity to say "yes" or "no" as to whether or not they had authority or control over the records and books and whether they could or would comply with the committee's subpena. For that reason, as far as they are concerned, this resolution is not properly before this House.

The SPEAKER: The Chair is ready to rule.

The report and the resolution are both before the House for its determination, and not the determination of the Chair. The Chair overrules the point of order.(11)

§ 20. Particular Conduct as Contumacious

The contempt statute, 2 USC § 192, penalizes any person summoned as a witness by a committee who "willfully(12) makes default" or who, having appeared, "refuses to answer any question. . . ." The word "default" means failure to appear in response to a summons(13) as well as failure to produce papers.(14) With respect to a witness summoned to give testimony, "default" includes not only failure to appear, but refusal to be sworn.(15)

A district court(16) held that the contempt statute proscribes every willful failure to comply with a summons, not merely the failure to appear pursuant to a summons, and interpreted the word "default" to mean failure to give testimony or produce papers as well as refusal to testify or appear. "Default" also applies to a witness' withdrawal from a hearing without consent of the committee.(17)

11. See § 17.4, supra, in which the House agreed to an amendment deleting names of all persons who had not been subpenaed.

12. See § 7, supra, for a discussion of willfulness in relation to intent of witness.

13. *United States* v *Bryan,* 339 U.S. 323, 327 (1950). See §§ 20.1, 20.2, infra.

14. *United States* v *Bryan,* 339 U.S. 323, 327 (1950). See §§ 20.9, 20.10, infra.

15. *Eisler* v *United States,* 170 F2d 273 (D.C. Cir. 1948), cert. dismissed, 338 U.S. 883 (1949); *United States* v *Josephson,* 165 F2d 82 (2d Cir. 1947), cert. denied, 333 U.S. 838 (1948). See §§ 20.3, 20.4, infra.

16. *United States* v *Hintz,* 193 F Supp 325 (N.D. Ill. 1961).

17. *United States* v *Costello,* 198 F2d 200 (2d Cir. 1952), cert. denied, 344 U.S. 874 (1952); *Townsend* v *United States,* 95 F2d 352 (D.C. Cir. 1938), cert. denied, 303 U.S. 664 (1938). See §§ 20.7, 20.8, infra.

The portion of the statute regarding refusal to answer any question is closely related to willfulness, an element which has been read into the statute notwithstanding the fact that "willful" or "willfully" does not expressly modify refusal to answer. A court of appeals [18] explained.

> The statute uses the word "willfully" as a word of art to define the offense of failing to appear; "willfully" is not used with respect to a person "who having appeared, refuses to answer. . . . " The act of refusing (as distinguished from failing) to answer is a positive, affirmative act; the result is conscious and intended. Congress recognized that a failure to appear in response to a summons could well be due to other causes than willfulness or deliberate purpose to disobey the summons or the statute. . . . To decline or refuse to answer a question, however, is by its own nature a deliberate and willful act.

A committee's failure to give a witness a clear direction to answer a question has constituted a ground on which to reverse contempt convictions.[19]

The precedents in this section illustrate particular conduct that has been regarded as contumacious.

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18. *Deutch* v *United States,* 235 F2d 858 (D.C. Cir. 1956).

19. *Emspak* v *United States,* 349 U.S. 190, 202 (1955); *Quinn* v *United States,* 349 U.S. 155, 165 (1955); *Bart* v *United States,* 349 U.S. 219, 221 (1955).

Refusal to Appear

§ 20.1 A committee filed a privileged report which included a contempt citation and facts relating to the refusal of a witness to appear before it.

On Apr. 22, 1947,[20] the Committee on Un-American Activities offered a privileged report, House Report No. 289, relating to a witness' refusal to appear in response to a subpena ad testificandum.

> PROCEEDINGS AGAINST EUGENE DENNIS, ALSO KNOWN AS FRANCIS WALDRON
>
> MR. [J. PARNELL] THOMAS of New Jersey: Mr. Speaker, by direction of the Committee on Un-American Activities, I present a privileged report, which I send to the Clerk's desk and ask to have read.
>
> The SPEAKER:[1] The Clerk will read the report.
>
> The Clerk read as follows:

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20. 93 Cong. Rec. 3813, 3814, 80th Cong. 1st Sess. On the same day, the House adopted a resolution (H. Res. 193) certifying the contemptuous conduct to the appropriate U.S. attorney. See also *United States* v *Dennis,* 171 F2d 986 (D.C. Cir. 1948), aff'd. 339 U.S. 162 (1950), wherein defendant's subsequent conviction was affirmed.

1. Joseph W. Martin, Jr. (Mass.).

REPORT CITING EUGENE DENNIS, ALSO KNOWN AS FRANCIS WALDRON

The Committee on Un-American Activities as created and authorized by the House of Representatives through the enactment of Public Law No. 601, section 121, subsection Q (2), caused to be issued a subpena to Eugene Dennis, also known as Francis Waldron, who is general secretary of the Communist Party of the United States. The said subpena directed Eugene Dennis, also known as Francis Waldron, to be and appear before the said Committee on Un-American Activities on April 9, 1947, and then and there to testify touching matters of inquiry committed to the said committee; the subpena being set forth in words and figures as follows:

"By authority of the House of Representatives of the Congress of the United States of America, to Robert E. Stripling: You are hereby commanded to summon Eugene Dennis, also known as Francis Waldron, general secretary, Communist Party of the United States, to be and appear before the Un-American Activities Committee of the House of Representatives of the United States, of which the Honorable J. Parnell Thomas is chairman, in their chamber in the city of Washington, on the 9th day of April 1947, at the hour of 10 a.m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee. Herein fail not, and make return of this summons.

"Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 26th day of March 1947.

"J. PARNELL THOMAS, *Chairman.*

"Attest:

"JOHN ANDREWS, *Clerk.*"

The said subpena was duly served, as appears by the return made thereon by Robert E. Stripling, chief investigator of the Committee on Un-American Activities, who was duly authorized to serve the said subpena and who served the said subpena upon instructions received from the chairman of the Committee on Un-American Activities. The return of the service by the said Robert E. Stripling being endorsed thereon, which is set forth in words and figures as follows:

"Subpena for Eugene Dennis also known as Francis Waldron before the Committee on Un-American Activities, United States House of Representatives, served at 11:35 a.m., March 26, 1947, in the committee's chambers in Washington, D.C.

"ROBERT E. STRIPLING,
"Chief Investigator,
Committee on Un-American Activities."

On April 7, 1947, a telegram was sent to Mr. Eugene Dennis, general secretary of the Communist party of the United States, which is set forth herein in words and figures as follows:

"April 7, 1947.

Mr. Eugene Dennis,
"General Secretary,
"Headquarters, Communist Party,
"50 East Thirteenth Street,
"New York, N.Y.

"This is to notify you that in response to the subpena which was served upon you March 26, you are to appear before the Committee on Un-American Activities, at the committee's chambers, 225 Old House Office Building, at 10 a.m., April 9, 1947, to then and there give testimony under oath concerning matters pertinent to the committee's inquiry.

"ROBERT E. STRIPLING,
"Chief Investigator,
Committee on Un-American Activities."

The said Eugene Dennis, also known as Francis Waldron, failed to appear before the said Committee on

Un-American Activities on April 9, 1947, as directed by the subpena served upon him on March 26, 1947, and the willful and deliberate refusal of the witness to appear before the Committee on Un-American Activities is a violation of the subpena served upon him by the Committee on Un-American Activities and places the said Eugene Dennis, also known as Francis Waldron, in contempt of the House of Representatives of the United States.

§ 20.2 The House agreed to a privileged resolution directing the Speaker to certify to the appropriate U.S. Attorney a report citing a witness in contempt for refusing to appear at an investigative hearing to which he had been subpenaed.

On Feb. 5, 1952,[2] the House on a roll call vote of 316 yeas to 0 nays approved a resolution directing the Speaker to certify a report.

MR. [JOHN S.] WOOD of Georgia: Mr. Speaker, I offer a privileged resolution (H. Res. 517) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of Representatives as to the willful default of Sidney Buchman in failing to appear before the Committee on Un-American Activities in response to a subpena duly served upon him, together with all the facts in connection therewith, under seal of the House of Representatives, to the United States Attorney for the District of Columbia, to the end that the said Sidney Buchman may be proceeded against in the manner and form provided by law.. . .

THE SPEAKER:[3] The question is on the resolution.

Mr. WOOD of Georgia: On that, Mr. Speaker, I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 316, nays 0, not voting 115, as follows: . . .

So the resolution was agreed to.

Refusal to Be Sworn

§ 20.3 A committee files a privileged report which includes

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2. 98 CONG. REC. 829, 832, 82d Cong. 2d Sess. See also, as a further example, 93 CONG. REC. 3806, 3811, 80th Cong. 1st Sess., Apr. 22, 1947, for the approval, on a vote of 357 yeas to 2 nays, of H. Res. 190, directing the Speaker to certify to the U.S. Attorney for the District of Columbia, H. REPT. NO. 281, citing Leon Josephson in contempt for refusing to appear before the Committee on Un-American Activities; and 93 CONG. REC. 3814, 3820, 80th Cong. 1st Sess., Apr. 22, 1947, for the approval, on a vote of 196 yeas to 1 nay, of H. Res. 193, directing the Speaker to certify to the U.S. Attorney for the District of Columbia H. REPT. NO. 289, citing Eugene Dennis, also known as Francis Waldron, in contempt for refusing to appear before the Committee on Un-American Activities.

3. Sam Rayburn (Tex.).

a contempt citation and facts relating to the refusal of a witness to be sworn.

On Sept. 10, 1973,[4] the Committee on Armed Services filed a privileged report relating to the refusal of G. Gordon Liddy to be sworn.

PROCEEDINGS AGAINST GEORGE GORDON LIDDY

MR. [LUCIEN N.] NEDZI [of Michigan]: Mr. Speaker, I rise to a question of the privilege of the House, and, by direction of the Committee on Armed Services, I submit a privileged report (H. Rept. No. 93–453).

The Clerk read as follows:

REPORT CITING GEORGE GORDON LIDDY

INTRODUCTION

On Friday, July 20, 1973, during an executive session of the Special Subcommittee on Intelligence of the House Committee on Armed Services, Mr. George Gordon Liddy, who was called as a witness, pursuant to a Writ of Habeas Corpus, refused to be sworn prior to offering any testimony or claiming his privilege under the Fifth Amendment. A quorum being present, the subcommittee voted to report the matter to the full House Committee on Armed Services with a recommendation for reference to the House of Representatives under procedures which could ultimately result in Mr. Liddy being cited for contempt of Congress. [See Appendix 1.] On July 26, 1973 the House Committee on Armed Services met to receive the report of the Special Subcommittee on Intelligence with regard to the refusal of Mr. Liddy to be sworn. On July 31, 1973, the full committee, a quorum being present, on a record vote of 33–0, recommended the adoption of a resolution as follows:

"RESOLUTION

"*Resolved*, That the Speaker of the House of Representatives, certify the report of the Committee on Armed Services of the House of Representatives as to the refusal of George Gordon Liddy to be sworn or to take affirmation to testify before a duly authorized subcommittee of the said Committee on Armed Services on July 20, 1973, together with all the facts in connection therewith, under the seal of the House of Representatives, to the United States Attorney for the District of Columbia, to the end that the said George Gordon Liddy may be proceeded against in the manner and form provided by law."

[See Appendix 2.]

BACKGROUND

At the time of the subcommittee hearings, Mr. Liddy was in confinement in the District of Columbia Jail as the result of his conviction on the Watergate breakin. Accordingly, the subcommittee petitioned Chief Judge John J. Sirica of the United States District Court for the District of Columbia for a Writ of Habeas Corpus Ad Testificandum as the only means of obtaining Mr. Liddy's presence before the subcommittee. In his discretion Judge Sirica signed that petition and an order was delivered to the United States Marshal for Mr. Liddy's appearance before the sub-

4. 119 CONG. REC. 28951, 28952, 93d Cong. 1st Sess. On the same date, the House considered the report and adopted a resolution certifying the matter to the appropriate U.S. attorney. See also *U.S.* v *Liddy,* Crim. No. 74–117 (D.D.C. 1974).

committee on July 20, 1973. [See Appendix 1, pp. 16–17.] Mr. Liddy appeared as ordered.

In his appearance Mr. Liddy was asked to rise and take the oath. He refused to take the oath as a witness. Subsequently, his counsel presented an extensive brief after which Mr. Liddy again refused to take the oath. The witness claimed he had the absolute right under the Fifth Amendment to remain completely silent with regard to any offering before the subcommittee. He sought to establish that contention based upon his current conviction on the Watergate breakin which is under appeal, and the possibility of future indictments being brought against him. He further argued a Sixth Amendment right to avoid what he claims to be prejudicial publicity in the media should he claim his Fifth Amendment rights. Mr. Liddy agreed that his refusal to be sworn was not based on any religious grounds.

AUTHORITY

The Special Subcommittee on Intelligence is a duly constituted subcommittee of the House Committee on Armed Services pursuant to House Resolution 185, 93d Congress, and the appointment made during the organization meeting of the Committee on Armed Services on February 27, 1973. [See Appendix 1, pp. 11–16.] In addition, the chairman of the subcommittee was given an order directing an inquiry into any CIA involvement in Watergate-Ellsberg matters. The subcommittee recommended those hearings on May 11, 1973, and in sixteen sessions since that date has had before it some twenty-four witnesses bearing on the subject of the inquiry. Prior to his appearance on July 20, 1973, Mr. Liddy, through his attorney, was advised by telephone of the purpose of the investigation and was asked to acknowledge that information by letter. That was done by Mr. Liddy's attorney on June 20, 1973. [See Appendix 1, pp. 17–18]. As indicated above, Mr. Liddy was properly before the subcommittee on a valid, duly executed Writ of Habeas Corpus Ad Testificandum [See Appendix 1, p. 16.]

CONCLUSION

The position of the committee is that all substantive and procedural legal prerequisites have been satisfied to date and that the House of Representatives should adopt the resolution to refer the matter to the appropriate U.S. Attorney. Title 2, United States Code, Sections 192 and 194 provide the necessary vehicles for taking this action. Section 192 provides the basis for indictment should a witness before either House of Congress refuse to answer any question pertinent to the inquiry. Section 194 provides the vehicle for certifying such a result to the appropriate U.S. Attorney. The central question is whether failure to take the oath constitutes a refusal to give testimony. We believe it does.

Accordingly, it is the position of the committee that the proceedings to date are in order and we recommend that the House adopt the resolution to report the fact of the refusal of George Gordon Liddy to be sworn to testify at a meeting of the Special Subcommittee on Intelligence on July 20, 1973 together with all the facts in connection therewith to the end that he may be proceeded against as provided by law.

A memorandum of law is contained in Appendix 3.[5]

§ 20.4 The House agreed to a privileged resolution direct-

5. Appendices 1, 2, and 3, the hearings of the subcommittee, meetings of the committee, and a legal memorandum, respectively, on pp. 28952–59, are omitted.

ing the Speaker to certify to the appropriate U.S. Attorney a report citing a witness in contempt for refusing to be sworn or make affirmation to testify at an investigative hearing.

On Sept. 23, 1970,[6] the House by a vote of 337 yeas to 14 nays approved House Resolution 1220, authorizing the Speaker to certify a report on a witness' refusal to testify to a U.S. Attorney.

MR. [RICHARD H.] ICHORD [of Missouri]: Mr. Speaker, by direction of the House Committee on Internal Security, I offer a privileged resolution (H. Res. 1220) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1220

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Internal Security of the House of Representatives as to the refusal of Arnold S. Johnson to be sworn or to make affirmation to testify before a duly authorized subcommittee of the said Committee on Internal Security, together with all the facts in connection therewith, under the seal of the House of Representatives, to the United States Attorney for the District of Columbia, to the end that the said Arnold S. Johnson may be proceeded against in the manner and form provided by law. . . .

MR. ICHORD: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

THE SPEAKER PRO TEMPORE:[7] The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

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6. 116 CONG. REC. 33269, 33278, 91st Cong. 2d Sess. See also, as examples, 119 CONG. REC. 28960, 28962, 28963, 93d Cong. 1st Sess., Sept. 10, 1973, for the approval, by a vote of 334 yeas to 11 nays, of H. Res. 536, directing the Speaker to certify to the U.S. Attorney for the District of Columbia, H. REPT. No. 93–453, from the Committee on Armed Services, citing G. Gordon Liddy for contempt for his refusal to be sworn or take affirmation to testify before the Special Subcommittee on Intelligence; and 93 CONG. REC. 1128, 1129, 1137, 80th Cong. 1st Sess., Feb. 18, 1947, for the approval by 370 yeas to 1 nay of H. Res. 104, directing the Speaker to certify to the U.S. Attorney for the District of Columbia the report [H. REPT. No. 43] citing Gerhart Eisler for contempt for his refusal to be sworn and testify before the Committee on Un-American Activities. Counsel for Mr. Liddy filed a memorandum outlining the English common law background of the fifth amendment. See 119 CONG. REC. 28952, 28953, 93d Cong. 1st Sess., Sept. 10, 1973.

7. Neal Smith (Iowa).

The question was taken; and there were—yeas 337, nays 14, not voting 78, as follows: . . .

So the resolution was agreed to.

The result of the vote was announced as above recorded.

The doors were opened.

A motion to reconsider was laid on the table.

Refusal to Answer Questions

§ 20.5 A committee filed a privileged report which included a contempt citation and facts relating to the refusal of a witness to answer questions.

On May 11, 1954,[8] the Committee on Un-American Activities offered a privileged report relating to the refusal of Francis X. T. Crowley to testify.[9]

PROCEEDINGS AGAINST FRANCIS X. T. CROWLEY

MR. [HAROLD H.] VELDE [of Illinois]: Mr. Speaker, by direction of the Committee on Un-American Activities, I present a privileged report (H. Rept. No. 1586).

The Clerk read the report, as follows:

> The Committee on Un-American Activities, as created and authorized by the House of Representatives, through the enactment of Public Law 601, section 121, subsection (q)(2) of the 79th Congress, and under House Resolution 5 of the 83d Congress, caused to be issued a subpena to Francis X. T. Crowley, 226 Second Avenue, Apartment 15, New York, N.Y. The said subpena directed Francis X. T. Crowley to be and appear before said Committee on Un-American Activities on May 4, 1953, at the hour of 10:30 a.m., then and there to testify touching matters of inquiry committed to said committee, and not to depart without leave of said committee. The subpena served upon said Francis X. T. Crowley is set forth in words and figures, as follows:
>
> "By authority of the House of Representatives of the Congress of the United States of America, to George C. Williams: You are hereby commanded to summon Francis X. T. Crowley to be and appear before the Committee on Un-American Activities, or a duly authorized subcommittee thereof, of the House of Representatives of the United States, of which the Honorable Harold H. Velde is chairman, in their chamber in the city of New York, room 110, Federal Building, on Monday, Mav 4, 1953, at the hour of 10:30 a.m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee.
>
> "Herein fail not, and make return of this summons.
>
> "Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 9th day of April, 1953.
>
> "HAROLD H. VELDE,
> *"Chairman.*
>
> "Attest: LYLE O. SNADER,
> *"Clerk."*
>
> The said subpena was duly served as appears by the return made thereon by George C. Williams, in-

8. 100 CONG. REC. 6400, 6401, 83d Cong. 2d Sess.

9. This citation was rescinded after Mr. Crowley answered questions before the committee. See § 21.1, infra, for the report of his purgation.

vestigator, who was duly authorized to serve the said subpena. The return of the service by the said George C. Williams, being endorsed thereon, is set forth in words and figures, as follows:

"Subpena for Francis X. T. Crowley, before the Committee on Un-American [Activities]. Served at home, 226 2d Avenue, Apt. 15, N.Y.C. on 4–24–53 at 6:32 p.m.

"GEORGE. C. WILLIAMS,
"Investigator, House of Representatives."

On May 4, 1953, a telegram was sent to Francis X. T. Crowley by Harold H. Velde, chairman of the House Committee on Un-American Activities, which is set forth in words and figures, as follows:

"NEW YORK, N.Y., *May 4, 1953.*

"FRANCIS X. CROWLEY, *226 Second Ave., New York City:*

"Your appearance before Committee on Un-American Activities is hereby postponed to Monday, June 8, 1953, 10:30 a.m., 226 House Office Building, Washington, D.C.

"HAROLD H. VELDE,
"Chairman."

The said Francis X. T. Crowley, pursuant to said subpena and in compliance therewith, appeared before the said committee on June 8, 1953, to give such testimony as required under and by virtue of Public Law 601, section 121, subsection (q)(2) of the 79th Congress, and under House Resolution 5 of the 83d Congress. The said Francis X. T. Crowley, having appeared as a witness and having been asked questions, namely:

"When you were in Boston, Mass. . . . were you a member of the West End Club of the Communist Party?

"Have you ever been associated with any members of the West End Club of Boston?

"Have you ever at any time been a member of the Communist Party?"

which questions were pertinent to the subject under inquiry, refused to answer such questions; and as a result of Francis X. T. Crowley's refusal to answer the aforesaid questions, your committee was prevented from receiving testimony and information concerning a matter committed to said committee in accordance with the terms of the subpena served upon the said Francis X. T. Crowley.

The record of the proceedings before the committee on June 8, 1953, during which Francis X. T. Crowley refused to answer the aforesaid questions pertinent to the subject under inquiry is set forth in fact as follows:

"UNITED STATES HOUSE
OF REPRESENTATIVES,
"SUBCOMMITTEE OF
THE COMMITTEE
ON UN-AMERICAN ACTIVITIES,
"Washington, D.C.,
Monday, June 8,1965.

"EXECUTIVE SESSION

The subcommittee of the Committee on Un-American Activities met, pursuant to call, at 10:43 a.m. in room 226 of the Old House Office Building, Hon. Bernard W. Kearney, presiding.

Committee member present: Representative Bernard W. Kearney (presiding).

* * * * *

"MR. KEARNEY. The committee will be in order.

"Let the record show that, for the purpose of the hearing this morning, a subcommittee has been set up composed of Mr. Kearney from New York. The hearing will be conducted under the authority granted for subcommittee by the chairman of the committee, Mr. Velde.

* * * * *

"Will you stand and be sworn?

"Do you solemnly swear the testimony you shall give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

"MR. CROWLEY. I do.

"TESTIMONY OF FRANCIS XAVIER THOMAS CROWLEY

"MR. KUNZIG. Mr. Crowley, are you accompanied by counsel here this morning?

"MR. CROWLEY. No; I am by myself.

"MR. KUNZIG. You understand, of course, your right to be accompanied by counsel if you so desire?

"MR. CROWLEY. I do.

"MR. KUNZIG. And it is your wish to be here present at this hearing today without counsel?

"MR. CROWLEY. Yes.

"MR. KUNZIG. Would you give your full name, please?

"MR. CROWLEY. Francis Xavier Thomas Crowley. The Thomas was a confirmation.

"MR. KUNZIG. And your present address, Mr. Crowley?

"MR. CROWLEY. 226 Second Avenue, New York.

"MR. KUNZIG. And what is your age at the present time?

"MR. CROWLEY. Twenty-seven.

* * * * *

"MR. KUNZIG. Mr. Crowley, when you were in Boston, Mass., that period of time prior to going to the University of Michigan that you have just told us about, were you a member of the West End Club of the Communist Party?

"MR. CROWLEY. Well, I can't answer that.

"MR. KEARNEY. What do you mean—you can't answer it?

"MR. CROWLEY. I won't answer it.

"MR. KEARNEY. On what grounds?

"MR. CROWLEY. It goes against my conscience to speak about it. I don't believe I should be in a position where I have to speak about anyone except my priest, and I have spoken to him about it. . . .

"MR. KEARNEY. . . . Have you ever been associated with any members of the West End Club of Boston?

"MR. CROWLEY. That comes to the same thing. I won't answer that either.

"MR. KEARNEY. You won't answer it?

* * * * *

"MR. CROWLEY. No.

"MR. KEARNEY. As I understand your testimony, you just refuse to answer any questions concerning your activities with communism?

"MR. CROWLEY. Yes, sir.

"MR. KEARNEY. Are you now a member of the Communist Party?

"MR. CROWLEY. No.

"MR. KEARNEY. Do you have any other questions?

"MR. KUNZIG. I think we better follow it up by asking: Have you ever at any time been a member of the Communist Party?

"MR. CROWLEY. I refuse to answer that."

* * * * *

Because of the foregoing, the said Committee on Un-American Activities was deprived of answers to pertinent questions propounded to said Francis X. T. Crowley relative to the subject matter which, under Public Law 601, section 121, subsection (q)(2) of the 79th Congress, and under House Resolution 5 of the 83d Congress, the said committee was instructed to investigate, and the refusal of the witness to answer questions, namely:

"When you were in Boston, Mass. . . . were you a member of

the West End Club of the Communist Party?

"Have you ever been associated with any members of the West End Club of Boston?

"Have you ever at any time been a member of the Communist Party?" which questions were pertinent to the subject under inquiry, is a violation of the subpena under which the witness had previously appeared, and his refusal to answer the aforesaid questions deprived your committee of necessary and pertinent testimony, and places the said witness in contempt of the House of Representatives of the United States.

§ 20.6 The House agreed to a privileged resolution directing the Speaker to certify to the U.S. Attorney a report citing a witness in contempt for refusing to answer questions at an investigative hearing.

On Sept. 3, 1959,(10) the House by voice vote approved a resolution directing the Speaker to certify a report citing a witness in contempt.

PROCEEDINGS AGAINST MARTIN POPPER

MR. [FRANCIS E.] WALTER [of Pennsylvania]: Mr. Speaker, I offer a privileged resolution (H. Res. 374) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of

10. 105 CONG. REC. 17934, 17935, 86th Cong. 1st Sess. See also, for example, 101 CONG. REC. 11521, 84th Cong. 1st Sess., July 26, 1955, for the voice vote approval of H. Res. 315, directing the Speaker to certify to the U.S. Attorney for the District of Columbia H. REPT. No. 1406, citing John T. Gojack, in contempt for refusing to testify before the Committee on Un-American Activities; and 100 CONG. REC. 11613, 83d Cong. 2d Sess., July 23, 1954, for the voice vote approval of H. Res. 666, directing the Speaker to certify to the U.S. Attorney for the District of Columbia H. REPT. No. 2457, citing Lloyd Barenblatt in contempt for refusing to testify before the Committee on Un-American Activities.

For related court proceedings, see *Gojack* v *United States,* 280 F2d 678 (D.C. Cir. 1960), rev'd sub nom., *United States* v *Russell,* 369 U.S. 749 (1962), wherein the court, in reversing defendant's conviction, held that a grand jury indictment under the contempt statute, 2 USC § 192, must state the subject matter under inquiry at the time of defendant's refusal to answer the committee's questions, so as to enable courts to determine the pertinency of the questions. See also *Popper* v *United States,* 306 F2d 290 (D.C. Cir. 1962), wherein the defendant's conviction was reversed because the indictment had insufficiently set forth the question under inquiry. And see *Barenblatt* v U*nited States,* 240 F2d 875 (D.C. Cir. 1957), vacated and rem'd, 354 U.S. 930, 252 F2d 129 (1958), aff'd., 360 U.S. 109 (defendant's conviction upheld).

Representatives as to the refusal of Martin Popper to answer questions before a duly constituted subcommittee of the Committee on Un-American Activities, together with all of the facts in connection therewith, under the seal of the House of Representatives, to the United States attorney for the District of Columbia, to the end that the said Martin Popper may be proceeded against in the manner and form provided by law. . . .

THE SPEAKER:[11] The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Refusal to Answer Questions and Departure Without Leave

§ 20.7 A committee filed a privileged report citing a witness in contempt for his failure to answer questions and his departure without leave.

On Oct. 18, 1966,[12] the Committee on Un-American Activities offered a privileged report citing Dr. Jeremiah Stamler in contempt for his refusal to answer questions and his departure without leave.

MR. [EDWIN E.] WILLIS [of Louisiana]: Mr. Speaker, I rise to a question of the privilege of the House and by direction of the Committee on Un-American Activities I submit a privileged report (Rept. No. 2306).

The Clerk read as follows:

PROCEEDINGS AGAINST JEREMIAH STAMLER

[Pursuant to Title 2, United States Code, Sections 192 and 194]

The Committee on Un-American Activities, as created and authorized by the House of Representatives, through the enactment of Public Law 601 of the 79th Congress, section 121, subsection (q)(2), and under House Resolution 8 of the 89th Congress, duly authorized and issued a subpena to Jeremiah Stamler. The subpena directed Jeremiah Stamler to be and appear before the said Committee on Un-American Activities, of which the Honorable Edwin E. Willis is chairman, or a duly appointed subcommittee thereof. . . .

This subpena was duly served as appears by the return thereon made by Neil E. Wetterman, who was duly authorized to serve it. The return of service of said subpena is set forth in words and figures as follows: . . .

The said Jeremiah Stamler, summoned as aforesaid, appeared and was called as a witness on May 27, 1965, to give testimony, as required by the said subpena, at a meeting of a duly authorized subcommittee of the Committee on Un-American Activities at the Old U.S. Court of Appeals Building in Chicago, Ill. He was accompanied by his counsel, Albert E. Jenner, Jr., and co-counsel, Thomas P. Sullivan, Esquires.

Having been sworn as a witness, he was asked to state his full name and residence for the record, to which he responded, giving same.

Thereafter, the witness was asked the question, namely: "Would you state the place and date of your birth, Dr. Stamler?" which question

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11. Sam Rayburn (Tex.).

12. 112 CONG. REC. 27500, 27501, 89th Cong. 2d Sess. The House adopted a resolution (H. Res. 1062) certifying the contempt on the following day. *Id.* at pp. 27641, 27642. See also *Stamler* v *Willis*, 415 F2d 1365 (7th Cir. 1969), cert. denied, 399 U.S. 929 (1970).

was pertinent to the subject under inquiry. He refused to answer said question and, in addition, stated that he would not answer any further questions that might be put to him touching matters of inquiry committed to said subcommittee.

The witness then departed the hearing room without leave of said subcommittee.

The foregoing refusals by Jeremiah Stamler to answer the aforesaid question and to answer any further questions, and his willful departure without leave, deprived the Committee on Un-American Activities of pertinent testimony regarding matters which the said committee was instructed by law and House resolution to investigate, and place the said Jeremiah Stamler in contempt of the House of Representatives of the United States.

Pursuant to resolution of the Committee on Un-American Activities duly adopted at a meeting held January 13, 1966, the facts relating to the aforesaid failures of Jeremiah Stamler are hereby reported to the House of Representatives, to the end that the said Jeremiah Stamler may be proceeded against for contempt of the House of Representatives in the manner and form provided by law.

The record of the proceedings before the said subcommittee, so far as it relates to the appearance of Jeremiah Stamler, including the statement by the chairman of the subject and matter under inquiry, is set forth in Appendix I, attached hereto and made a part hereof.

Other pertinent committee proceedings are set forth in Appendix II, and made a part hereof.(13)

§ 20.8 The House agreed to a privileged resolution directing the Speaker to certify a report citing a witness in contempt for refusal to testify and his departure without leave.

On Oct. 18, 1966,(14) the House by voice vote approved a resolution directing the Speaker to certify a report citing a witness in contempt.(15)

PROCEEDINGS AGAINST MILTON MITCHELL COHEN

MR. [EDWIN E.] WILLIS [of Louisiana]: Mr. Speaker, I offer a privileged resolution (H. Res. 1060) from the Committee on Un-American Activities and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1060

Resolved, That the Speaker of the House of Representatives certify the

13. The appendices have been omitted.

14. 112 CONG. REC. 27448, 27484, 27485, 89th Cong. 2d Sess. See also, for example, 112 CONG. REC. 27495, 27500, 89th Cong. 2d Sess., for the voice vote approval of H. Res. 1061, directing the Speaker to certify to the U.S. Attorney for the Northern District of Illinois H. REPT. No. 2305, citing Yolanda Hall in contempt for her refusal to testify and her departure without leave before the Committee on Un-American Activities.

15. Prior to approving the resolution, the House by a vote of 90 yeas to 181 nays rejected the motion of Mr. Silvio O. Conte (Mass.), to recommit this resolution to a select committee of seven members to examine the sufficiency of the citations. See § 17.2, supra, for the text of this motion to recommit.

report of the Committee on Un-American Activities of the House of Representatives as to the refusals of Milton Mitchell Cohen to answer questions pertinent to the subject under inquiry before a duly authorized subcommittee of the said Committee on Un-American Activities, and his departure without leave, together with all the facts in connection therewith, under the seal of the House of Representatives, to the United States attorney for the northern district of Illinois, to the end that the said Milton Mitchell Cohen may be proceeded against in the manner and form provided bylaw. . . .

THE SPEAKER:[16] The question is on the adoption of the resolution.

The question was taken, and the Speaker announced that the ayes appeared to have it.

Refusal to Produce Materials

§ 20.9 A committee filed a privileged report which included a contempt citation and facts relating to the refusal of a witness to produce subpenaed materials.

On Aug. 23, 1960,[17] the Committee on the Judiciary filed a privileged report relating to the refusal of a witness to produce subpenaed materials.

MR. [EMANUEL] CELLER [of New York]: Mr. Speaker, I send to the desk a privileged report (Reps. No. 2120) from the Committee on the Judiciary in relation to the conduct of S. Sloan Colt.

THE SPEAKER:[18] The Clerk will read the report.

The Clerk read as follows:

PROCEEDINGS AGAINST S. SLOAN COLT

Subcommittee No. 5 of the Committee on the Judiciary, as created and authorized by the House of Representatives through the enactment of Public Law 601, section 121, of the 79th Congress, and under House Resolution 27 and House Resolution 530, both of the 86th Congress, caused to be issued a subpena duces tecum to S. Sloan Colt, chairman, board of commissioners of the Port of New York Authority, 111 Eighth Avenue, New York, N.Y. The subpena directed S. Sloan Colt to be and appear before Subcommittee No. 5 of the Committee on the Judiciary, at 10 a.m. on June 29, 1960, in their chamber in the city of Washington, and to bring with him from the files of the Port of New York Authority certain specified documents, and to testify touching matters of inquiry committed to the subcommittee.

The subpena was duly served as appears by the return made thereon by counsel for the committee who was duly authorized to serve the subpena.

S. Sloan Colt, pursuant to the subpena duly served upon him, appeared before Subcommittee No. 5 of the Committee on the Judiciary on June 29, 1960, to give testimony as required by Public Law 601, section 121, of the 79th Congress, and by House Resolutions 27 and 530 of the 86th Congress. However, S. Sloan Colt, having appeared as a witness and having complied in part with the

16. John W. McCormack (Mass.).

17. 106 CONG. REC. 17313–15, 86th Cong. 2d Sess. A resolution certifying the contemptuous conduct was acted on immediately after the report was filed and considered.

18. Sam Rayburn (Tex.).

subpena duces tecum served upon him by bringing with him part of the documents demanded therein, (1) failed and refused to produce certain other documents in compliance with the subpena duces tecum, which documents are pertinent to the subject matter under inquiry, and (2) failed and refused to produce certain documents as ordered by the subcommittee, which documents are pertinent to the subject matter under inquiry.

At those proceedings the subcommittee chairman explained in detail the authority for the subcommittee's inquiry, the purpose of the inquiry, and its scope. The subcommittee also gave to the witness a lengthy and detailed explanation of the pertinence to its inquiry of each category of documents demanded in the subpena served upon the witness. Notwithstanding these explanations and notwithstanding a direction by the subcommittee to produce the documents required by the subpena, S. Sloan Colt contumaciously refused to produce the following categories of documents under his control and custody:

(1) Internal financial reports, including budgetary analyses, postclosing trial balances, and internal audits; and management and financial reports prepared by outside consultants;

(2) All agenda of meetings of the board of commissioners and of its committees; all reports to the commissioners by members of the executive staff; and

(3) All communications in the files of the Port of New York Authority and in the files of any of its officers and employees including correspondence, interoffice and other memorandums, and reports relating to:

(a) The negotiation, execution, and performance of construction contracts; negotiation, execution, and performance of insurance contracts, policies, and arrangements; and negotiation, execution, and performance of the public relations contracts, policies, and arrangements;

(b) The acquisition, transfer, and leasing of real estate;

(c) The negotiation and issuance of revenue bonds;

(d) The policies of the authority with respect to the development of rail transportation.

The subcommittee was thereby deprived by S. Sloan Colt of information and evidence pertinent to matters of inquiry committed to it under House Resolutions 27 and 530, 86th Congress. His persistent and illegal refusal to supply the documents as ordered deprived the subcommittee of necessary and pertinent evidence and places him in contempt of the House of Representatives.

Incorporated herein as appendix I is the record of the proceedings before Subcommittee No. 5 of the Committee on the Judiciary on the return of the subpenas duces tecum served upon S. Sloan Colt and others. The record of proceedings contains, with respect to Mr. Colt:

(1) The full text of the subpena duces tecum (appendix, pp. 21–22);

(2) The return of service of the subpena by counsel for the committee, set forth in words and figures (appendix, p. 26);

(3) The failure and refusal of the witness to produce documents required by the subpena issued to and served upon him (appendix, pp. 23–25);

(4) The explanation given to the witness as to the authority for, purpose and scope of, the subcommittee's inquiry (appendix, pp. 1–20);

(5) The explanation given the witness of the pertinence of each category of requested documents (appendix, pp. 48–52);

(6) The subcommittee's direction to the witness to produce the required documents (appendix, pp. 52–53);

(7) The failure and refusal of the witness to produce the documents pursuant to direction (appendix, pp. 53–54);

(8) The ruling of the chairman that the witness is in default (appendix, p. 55).

OTHER PERTINENT COMMITTEE PROCEEDINGS

At the organizational meeting of the Committee on the Judiciary for the 86th Congress, held on the 27th day of January 1959, Subcommittee No. 5 was appointed and authorized to act upon matters referred to it by the chairman. On June 8, 1960, at an executive session of Subcommittee No. 5 of the Committee on the Judiciary, at which Chairman Emanuel Celler, Peter W. Rodino, Jr., Byron G. Rogers, Lester Holtzman, Herman Toll, William M. McCulloch, and George Meader were present, Subcommittee No. 5 formally instituted an inquiry into the activities and operations of the Port of New York Authority under the interstate compacts approved by Congress in 1921 and 1922. At that meeting the subcommittee also unanimously resolved to request the following specified items from the files of the Port of New York Authority by letter and to subpena the same documents from the appropriate officials in the event this information was not voluntarily supplied:

(1) All bylaws, organization manuals, rules, and regulations;

(2) Annual financial reports; internal financial reports, including budgetary analyses, postclosing trial balances, and internal audits; and management and financial reports prepared by outside consultants;

(3) All agenda and minutes of meetings of the board of commissioners and of its committees; all reports to the commissioners by members of the executive staff;

(4) All communications in the files of the Port of New York Authority and in the files of any of its officers or employees including correspondence, interoffice and other memorandums, and reports relating to-

(a) The negotiation, execution, and performance of construction contracts; negotiation, execution, and performance of insurance contracts, policies, and arrangements; and negotiation, execution, and performance of public relations contracts, policies, and arrangements;

(b) The acquisition, transfer, and leasing of real estate;

(c) The negotiation and issuance of revenue bonds;

(d) The policies of the authority with respect to the development of rail transportation.

On June 29, 1960, following the appearance of the aforesaid witness, Subcommittee No. 5 of the Committee on the Judiciary, at an executive session at which all members of the subcommittee were present, unanimously resolved to report the contumacious conduct of S. Sloan Colt and others to the Committee on the Judiciary with the recommendation that the committee report this conduct to the House of Representatives together with all particulars and recommend that the House cite S. Sloan Colt for contempt of the House of Representatives.

At an executive session on June 30, 1960, the Committee on the Judiciary approved the recommendations of Subcommittee No. 5 to report to the House all details concerning the contumacious conduct of S. Sloan Colt and others, and resolved to recommend that S. Sloan Colt be cited for contempt of the House of Representatives.

MINORITY VIEWS OF REPRESENTATIVE JOHN V. LINDSAY

I cannot agree with the majority recommendations in the committee

report. The committee proceeding, calculated to form a basis for contempt citations under title 2, United States Code, section 192, in my opinion constitutes an unprecedented, unlawful, and unconstitutional exercise of Federal authority over a bistate agency, which can and should be avoided. The Port of New York Authority was created by the States of New York and New Jersey with the consent of Congress to exercise delegations of State, not Federal, powers.

My objections are threefold: (1) The committee acted without legal authority and exceeded its jurisdiction; (2) the committee lacked a legislative purpose in inquiring into the internal affairs of a bistate agency; and (3) the committee inadvisably and without caution initiated an unprecedented exercise of Federal control in the delicate area of State sovereignty despite the pleas of the two interested Governors to be accorded a hearing before the return fate of the subpenas. As a result, and I emphasize this point, the documentary material, which the witnesses did not produce, was withheld pursuant to written instructions from Governors Rockefeller and Meyner. The witnesses were damned if they complied with the subpenas and damned if they didn't. . . .

MINORITY VIEWS OF REPRESENTATIVE JOHN H. RAY

The majority of the Judiciary Committee recommends that contempt citations under title 2, United States Code, section 192, be issued against the chairman, the executive director, and the secretary of the Port of New York Authority. In my opinion the action so recommended by the majority would not only be unprecedented and unwise as a matter of Federal and State relations, it is not sanctioned by law and should and would be held unconstitutional.

§ 20.10 The House agreed to a privileged resolution directing the Speaker to certify to the appropriate U.S. Attorney a report citing a witness in contempt for refusing to produce subpenaed materials.

On Aug. 2, 1946,[19] the House by voice vote approved a resolu-

19. 92 CONG. REC. 10748, 79th Cong. 2d Sess. See also, for example, 112 CONG. REC. 1754, 1763, 89th Cong. 2d Sess., Feb. 2, 1966, for the approval, on a vote of 344 yeas to 28 nays, of H. Res. 699, directing the Speaker to certify to the U.S. Attorney for the District of Columbia, H. REPT. No. 1241, citing Robert M. Shelton, allegedly of the Ku Klux Klan, in contempt for refusal to produce subpenaed materials to the Committee on Un-American Activities (resolutions against other alleged Klan members follow the Shelton resolution. In *Shelton* v *United States*, 404 F2d 1292 (D.C. Cir. 1968), cert. denied, 393 U.S. 1024 (1969), the defendant's conviction was upheld by the appellate court. The same defendant had earlier been convicted of contempt of Congress following an appearance before the Senate Judiciary Committee's Subcommittee on Internal Security. *United States* v *Shelton*, 148 F Supp 926 (D.D.C. 1957), aff'd., 280 F2d 701, rev'd and rem'd, 369 U.S. 749 (1962), 211 F Supp 829, aff'd., 327 F2d 601 (D.C. Cir. 1963).

See 106 CONG. REC. 17313, 86th Cong. 2d Sess., Aug. 23, 1960, for

tion citing a witness in contempt for refusal to produce subpenaed materials.

PROCEEDINGS AGAINST RICHARD MORFORD

THE SPEAKER:[20] The Clerk will read the resolution.

The Clerk read as follows:

HOUSE RESOLUTION 752

Resolved, That the Speaker of the House of Representatives certify the foregoing report of the House Committee on Un-American Activities as to the willful and deliberate refusal of the following person to produce before the said committee for its inspection certain books, papers, and records which had been duly subpenaed, and to testify under oath concerning all pertinent facts relating thereto; under seal of the House of Representatives to the United States attorney for the District of Columbia to the end that the said person named below may be proceeded against in the manner and form provided by law; Richard Morford, 114 East Thirty-second Street, New York, N.Y. . . .

The previous question was ordered.

THE SPEAKER: The question is on the resolution.

The question was taken; and on a division (demanded by Mr. Marcantonio) there were—ayes 166, noes 17.

So the resolution was agreed to.

A motion to reconsider was laid on the table.[21]

Senate Precedents

§ 20.11 The Senate agreed to a resolution directing its President to certify to a U.S. Attorney a report citing a witness in contempt for failing to appear before an investigative hearing.

On May 6, 1953,[22] the Senate approved a resolution directing its

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the approval, on a vote of 190 yeas to 60 nays, of H. Res. 606, directing the Speaker to certify to the U.S. Attorney for the District of Columbia H. REPT. No. 2117, citing Austin J. Tobin, of the Port of New York Authority in contempt for refusal to produce subpenaed materials to Subcommittee No. 5, of the Committee on the Judiciary (resolutions against other Port Authority officials follow the Tobin resolution).

In *United States* v *Tobin*, 195 F Supp 588 (D.D.C. 1961), rev'd 306 F2d 270, cert. denied, 371 U.S. 902 (1962), defendant's conviction was reversed on appeal, the court holding that certain documents demanded by the committee were not within the scope permitted by the pertinent congressional resolution.

20. Sam Rayburn (Tex.).

21. See also *Morford* v *United States*, 72 F Supp 58 (D.D.C. 1947), aff'd., 176 F2d 54 (1949), rev'd 339 U.S. 258 (1950), rem'd, 184 F2d 864, cert. denied, 340 U.S. 878 (1950). The Supreme Court initially reversed defendant's conviction because defendant had not been permitted to question four government employees on the jury panel as to the impact of Executive Order No. 9835 (the "Loyalty Order") on their ability to render a just and fair verdict. On retrial, defendant waived a jury and was convicted again.

22. 99 CONG. REC. 4603, 83d Cong. 1st Sess.

President to certify to a U.S. Attorney a contempt citation.

THE PRESIDING OFFICER:[23] Is there objection to the consideration of the resolution? There being no objection, the resolution (S. Res. 103) was considered and agreed to, as follows:

Resolved, That the President of the Senate certify the report of the Committee on Government Operations of the United States Senate as to the willful default of Russell W. Duke in failing to appear to testify before the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations of the United States Senate in response to a subpena, together with all the facts in connection therewith, under the seal of the United States Senate, to the United States attorney for the District of Columbia, to the end that the said Russell W. Duke may be proceeded against in the manner and form provided by law.

§ 20.12 The Senate agreed to a resolution directing its President to certify to a U.S. Attorney a report citing a witness in contempt for refusing to answer questions at an investigative hearing.

On Feb. 4, 1955,[24] the Senate approved a resolution directing its President to certify to a U.S. Attorney a contempt citation.

CITATION OF DIANTHA D. HOAG FOR CONTEMPT OF THE SENATE

MR. [EARLE C.] CLEMENTS [of Kentucky]: Mr. President, I move that the Senate proceed to the consideration of Calendar No. 3, Senate Resolution 31.

THE PRESIDING OFFICER:[1] The resolution will be stated by title for the information of the Senate.

THE LEGISLATIVE CLERK: A resolution (S. Res. 31) citing Diantha D. Hoag for contempt of the Senate.

THE PRESIDING OFFICER: The question is on agreeing to the motion of the Senator from Kentucky.

The motion was agreed to, and the Senate proceeded to consider the resolution which was read as follows:

Resolved, That the President of the Senate certify the report of the Committee on Government Operations of the United States Senate as to the refusal of Diantha D. Hoag to answer questions before the Senate Permanent Subcommittee on Investigations, said refusal to answer being pertinent to the subject matter under inquiry, together with all the facts in connection therewith, under

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23. Alvin R. Bush (Pa.).

24. 101 CONG. REC. 1159, 84th Cong. 1st Sess. See also, for example, 101 CONG. REC. 11678, 84th Cong. 1st Sess., July 27, 1955, for the voice vote approval of S. Res. 129, citing Joseph Starobin in contempt for refusing to answer questions before the Senate Subcommittee to Investigate the Administration of the Internal Security Act and other Internal Security Laws of the Committee on the Judiciary; and 98 CONG. REC. 1311, 82d Cong. 2d Sess., Feb. 25, 1952, for the voice vote approval of S. Res. 281 and 282, citing Roger Simkins and Emmitt Warring, respectively, in contempt for refusing to answer questions before the Committee on the District of Columbia.

1. William S. Hill (Colo.).

the seal of the United States Senate to the United States attorney for the District of Columbia, to the end that the said Diantha D. Hoag may be proceeded against in the manner and form provided by law.

MR. [GEORGE H.] BENDER [of Ohio]: Mr. President, the Senator from Wisconsin [Mr. McCarthy], who reported the resolution to the Senate, is absent, and he asked me to pursue it for him. However, I am sure there is no need for any speech on the subject.

THE PRESIDING OFFICER: The question is on agreeing to the resolution.

The resolution (S. Res. 31) was agreed to.[2]

§ 20.13 The Senate agreed to a resolution directing its President to certify to the appropriate U.S. Attorney a report citing a witness in contempt for his refusal to answer questions and his departure without leave at an investigative hearing.

On July 19, 1968,[3] the Senate approved a resolution directing its President to certify to a U.S. Attorney a report citing a witness in contempt.

CITATION FOR CONTEMPT OF THE SENATE

MR. [ROBERT C.] BYRD of West Virginia: Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Senate Resolution 379.[4]

THE PRESIDING OFFICER:[5] The resolution will be stated by title.

THE ASSISTANT LEGISLATIVE CLERK: A resolution (S. Res. 379) citing Jeff Fort for contempt of the Senate.

THE PRESIDING OFFICER: Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution, as follows:

S. RES. 379

Resolved, That the President of the Senate certify the report of the Com-

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2. See also *United States* v *Hoag*, 142 F Supp 667 (D.D.C. 1956). The defendant was found not guilty, the court ruling that by answering a limited number of the committee's questions, she did not waive her privilege against self-incrimination under the fifth amendment. Thus, defendant's subsequent refusal to answer questions regarding possible activities on behalf of the Communist Party did not constitute violation of the statute making it an offense for a person to refuse to testify (2 USC § 192).

3. 114 CONG. REC. 22351, 22361, 22362, 90th Cong. 2d Sess. See also *United States* v *Fort*, 443 F2d 670, cert. denied, 403 U.S. 932 (1971), wherein the defendant's conviction was upheld. The right to confront witnesses was not applicable, in the court's view, because a legislative inquiry is not the same as a criminal proceeding.

4. *Parliamentarian's Note:* A resolution citing a person for contempt for refusing to answer questions is privileged under Senate rules. This particular resolution was called up by unanimous consent because it was not controversial and was considered out of the regular order of business.

5. Joseph D. Tydings (Md.).

mittee on Government Operations of the United States Senate on the appearance of Jeff Fort before the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations on July 9, 1968, in Washington, District of Columbia, at which he—

(1) refused to answer one question,

(2) refused to answer any and all questions that were to be put to him by the subcommittee,

(3) departed the hearing without leave, such conduct and refusals to answer questions being pertinent to the subject matter under inquiry, together with all the facts in connection therewith, under the seal of the United States Senate, to the United States Attorney for the District of Columbia, to the end that the said Jeff Fort may be proceeded against in the manner and form provided by law. . . .[6]

THE PRESIDING OFFICER: All time has been yielded back. The question is on agreeing to Senate Resolution 379. On this question, the yeas and nays have been ordered, and the clerk will call the roll. . . .

The result was announced—yeas 80, nays 0, as follows: . . .

So the resolution (S. Res. 379) was agreed to.

§ 20.14 The Senate agreed to a resolution directing its President to certify to a U.S. Attorney a report citing witnesses in contempt for refusing to produce subpenaed materials.

On May 5, 1969,[7] the Senate agreed to a resolution directing its President to certify to a U.S. Attorney a contempt citation.

CITATION OF ALAN AND MARGARET MCSURELY FOR CONTEMPT OF CONGRESS

The resolution (S. Res. 191) citing Alan and Margaret McSurely for contempt of Congress was considered and agreed to, as follows:

S. RES. 191

Resolved, That the President of the Senate certify the report of the Com-

6. The excerpts from the report are omitted.

7. 115 CONG. REC. 11278, 91st Cong. 1st Sess. See *United States* v *McSurely*, 473 F2d 1178 (D.C. Cir. 1972), wherein defendant's conviction was reversed, the trial court having erred in receiving in evidence subpenas which were based ultimately on the fruits of an illegal search and seizure.

See also 101 CONG. REC. 10916, 84th Cong. 1st Sess., July 19, 1955, for the voice vote approval of S. Res. 135, citing Eugene C. James in contempt for refusing to produce subpenaed materials and answer questions; and 99 CONG. REC. 8883, 8884, 83d Cong. 1st Sess., July 15, 1953, for the voice vote approval of S. Res. 139, citing Timothy J. O'Mara in contempt for refusing to produce subpenaed materials and answer questions.

In *United States* v *O'Mara*, 122 F Supp 399 (1954), the defendant was convicted, the court having found, in part, that information sought was pertinent to the inquiry.

mittee on Government Operations of the United States Senate on the appearance of Alan McSurely and Margaret McSurely before the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations on March 4, 1969, in Washington, District of Columbia, at which they—

(1) refused to produce books and records lawfully subpenaed to be produced before the said subcommittee, and

(2) failed to appear or to produce the said books and records pursuant to the order and direction of the chairman with the approval of the subcommittee before noon on March 7, 1969, together with all the facts in connection therewith, under the seal of the United States Senate, to the United States Attorney for the District of Columbia, to the end that the said Alan McSurely and Margaret McSurely may be proceeded against in the manner and form provided by law.

§ 21. Purging Contempt

As the following precedents reveal, a witness may be purged of, or freed from, contempt under procedures parallel to those used in citing for contempt: submission of a report of the committee and approval of a resolution authorizing the Speaker to notify the U.S. Attorney to drop the prosecution. (8)

Courts have not been sympathetic to witnesses' contentions that they have purged themselves. For example, an argument that an unexcused withdrawal from a hearing did not obstruct a committee's inquiry because the witness returned later and answered all questions put to him was held irrelevant, because a witness does not have a legal right to dictate the conditions under which he will testify.(9) In fact, a witness' offer of proof that he had purged himself by testifying freely before another Senate committee and by opening union files to its scrutiny was rejected on the ground that the defense of purging in criminal contempt has been abolished in the federal courts.(10) A court may, however, suspend the sentence of a witness convicted of violating 2 USC § 192 and give him an opportunity to avoid punishment by giving testimony before a committee whose questions he had refused to answer.

Report

§ 21.1 The Committee on Un-American Activities reported

8. See 3 Hinds' Precedents §§ 1670, 1682, 1684, 1686, 1687, 1689, 1692, 1694, 1701, 1702, for earlier precedents relating to purgation.

9. *United States* v *Costello,* 198 F2d 200 (2d Cir. 1952), cert. denied, 344 U.S. 874 (1952).

10. *United States* v *Brewster,* 154 F Supp 126, 135 (D.D.C. 1957), reversed on other grounds, 255 F2d 899 (D.C. Cir. 1958), cert. denied, 358 U.S. 842 (1958).

to the House testimony purging a witness who had been cited for his previous refusal to testify and recommended that legal proceedings against the witness be terminated.

On July 23, 1954,[11] a report purging a witness of contempt was presented and read.[12]

IN THE MATTER OF FRANCIS X. T. CROWLEY

MR. [HAROLD H.] VELDE [of Illinois]: Mr. Speaker, by direction of the Committee on Un-American Activities, I submit a privileged report (Rept. No. 2472).

The Clerk read as follows:

IN THE MATTER OF FRANCIS X. T. CROWLEY

Mr. Velde, from the Committee on Un-American Activities, submitted the following report:

The Committee on Un-American Activities, as created and authorized by the House of Representatives, through the enactment of Public Law 601, section 121, subsection (q) (2) of the 79th Congress, and under House Resolution 5 of the 83d Congress, caused to be issued a subpena to Francis X. T. Crowley, 226 Second Avenue, apartment 15, New York, N. Y. The said subpena directed Francis X. T. Crowley to be and appear before said Committee on Un-American Activities, of which the Honorable Harold H. Velde is chairman, on May 4, 1953, at the hour of 10:30 a.m., then and there to testify touching matters of inquiry committed to said committee, and not to depart without leave of said committee.

The said Francis X. T. Crowley did appear before said committee and did refuse to answer questions pertinent to the subject under inquiry, and his refusal to answer said pertinent questions deprived your committee of necessary and pertinent testimony and placed the said witness in contempt of the House of Representatives of the United States.

In Report No. 1586, 83d Congress, 2d session, your committee reported to the House of Representatives the said actions of Francis X. T. Crowley. On May 11, 1954, the House of Representatives adopted by vote of 346 to 0, House Resolution 541, which is set forth in words and figures as follows:

"*Resolved*, That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of Representatives as to the refusal of Francis X. T. Crowley to answer questions before the said Committee on Un-American Activities, together with all the facts in connection therewith, under seal of the House of Representatives, to the United States attorney for the District of Columbia, to the end that the said Francis X. T. Crowley may be proceeded against in the manner and form provided by law."

On June 28, 1954, the said Francis X. T. Crowley did appear voluntarily before your committee in public session in Washington, D.C., and did

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11. 100 CONG. REC. 11650, 83d Cong. 2d Sess.

12. See § 21.2, infra, for the resolution purging Mr. Crowley, and 100 CONG. REC. 6400, 6401, 83d Cong. 2d Sess., May 11, 1954, for the texts of H. REPT. No. 1586, relating to the refusal of Mr. Crowley to testify, and H. Res. 541, authorizing the Speaker to certify that report to the U.S. Attorney for legal action.

answer all questions which he had previously refused to answer. In addition, the said Francis X. T. Crowley voluntarily did give your committee extensive information concerning the operation of the Communist conspiracy in the United States of America.

At the conclusion of the testimony of the said Francis X. T. Crowley before your committee on June 28, 1954, the chairman, Hon. Harold H. Velde, made a statement which is set forth in words as follows: . . .

"MR. VELDE. May I say that we certainly do appreciate the information you have given here voluntarily to the committee.

"As I mentioned before the committee would not be authorized as a body to ask for immunity from prosecution for you. However, I do feel that many of the members of the committee, probably a big majority, feel that you have performed a service to your country by giving us the information that you have, and that would possibly be a good reason why the Attorney General should drop prosecution in your particular case for contempt.

* * * * *

"MR. VELDE. The witness is excused with the committee's thanks."

Because of the foregoing, on July 16, 1954, your committee voted that it was the sense of the committee that the said Francis X. T. Crowley, because of his voluntary answers to pertinent questions before the committee and the extensive voluntary information he offered concerning the operation of the Communist conspiracy in the United States of America, did purge himself of contempt of the House of Representatives of the United States.

Resolution

§ 21.2 The House debated and approved a resolution purging the contempt of a witness who had previously refused to testify before the Committee on Un-American Activities.

On July 23, 1954,[13] the House debated and approved a resolution authorizing the Speaker to certify to the U.S. Attorney a report purging a witness of contempt.[14]

MR. [HAROLD H.] VELDE [of Illinois]: Mr. Speaker, I offer a resolution (H. Res. 681) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of Representatives concerning the action of Francis X. T. Crowley in

13. 100 CONG. REC. 11650–52, 83d Cong. 2d Sess. See also § 21.3, infra, for the Speaker's announcement that he had certified the purgation and § 21.4, infra, for the U.S. Attorney's statement that the prosecution would be dropped.

14. See § 21.1, supra, for the report on this matter and 100 CONG. REC. 6400, 6401, for the texts of H. REPT. NO. 1586, relating to the refusal of Mr. Crowley to testify, and H. Res. 541, authorizing the Speaker to certify the report to the U.S. Attorney for legal action.

purging himself of contempt of the House of Representatives of the United States, together with all the facts in connection therewith, under seal of the House of Representatives, to the United States Attorney for the District of Columbia, to the end that legal proceedings based upon the matter certified by the Speaker pursuant to H. Res. 541, 83d Congress, second session, against the said Francis X. T. Crowley may be withdrawn and dropped in the manner and form provided by law.

MR. VELDE: Mr. Speaker, I yield such time as he may desire to the gentleman from California [Mr. Jackson].

MR. [DONALD L.] JACKSON [of California]: Mr. Speaker, on May 11, 1954, the House adopted by a vote of 346 to 0, House Resolution 541 citing Francis X. T. Crowley for contempt of Congress. On June 28, 1954, Mr. Crowley again appeared before the House Committee on Un-American Activities at his own request and answered all questions, giving the Congress and the committee extensive information relative to his activities and those of others in the Communist Party.

The action here proposed, while not without precedent, is most unusual, in that the House Committee on Un-American Activities is today asking the House to concur in a committee recommendation that a witness who was previously cited by the House for contempt, and in the light of subsequent cooperation with the committee, be purged of that contempt.

It is the sense of the committee that Mr. Crowley should be purged of contempt. However, Mr. Speaker, I should like to emphasize one important point relative to Francis X. T. Crowley. When the witness refused originally to testify before the committee and later came back to testify, it is our clear understanding that he was acting upon his own initiative. He came back to testify on his own volition. He was not acting in furtherance of any conspiracy. He was not attempting to impede legitimate congressional investigations, in the opinion of the committee.

The committee wants it clearly understood that its unusual action today in recommending that Francis X. T. Crowley be considered as having purged himself of contempt must not be considered as a precedent for any witness to commit contempt on one day and attempt to purge himself of the charge on the next. In such case, a witness would thereby be able to select the time and place of giving his testimony. A congressional committee is entitled to testimony when and where it deems it necessary and proper to have that testimony. The power to decide when and where one shall testify is not properly, under the law, in the hands of a witness. The Crowley case is no precedent for any such interpretation.

It must further be remembered that Mr. Crowley came back voluntarily before the committee, and was promised nothing in the way of any remuneration, reward, or forgiveness. He understood that he was promised nothing and that he testified freely of his own will because he desired strongly so to testify.

It is the hope of the committee that the House will accept the recommendation that Mr. Crowley be purged of contempt in this instance.

MR. [JAMES G.] FULTON [of Pennsylvania]: Mr. Speaker, will the gentleman yield?

MR. JACKSON: I yield to the gentleman from Pennsylvania.

MR. FULTON: If the House adopts this recommendation as a practice, and leaving this particular case out of it, will it not weaken the Committee on Un-American Activities? Will not witnesses who become the defendants in these citations for contempt proceedings feel that they have up until the time they are brought into court to change their minds? If the committee adheres to a rule that the witnesses are required to come before the Un-American Activities Committee in the beginning and testify, will it not expedite the committee's hearings, instead of waiting for the defendant to turn milk toast later on?

MR. JACKSON: It would simplify matters a great deal if we could adopt a rule that would require them to testify in their first appearance. If that could be achieved, there would be no need for contempt proceedings in the House. However, there are instances where it is believed that a witness in good faith, through misunderstanding of the circumstances, or upon poor advice, refuses to testify. Mr. Crowley, following his appearance here, went to a priest, who recommended that he return to the committee and tell the full truth. He did so. I have tried to point out in my remarks, I will say to the gentleman from Pennsylvania, that the committee is not establishing, and wants it clearly understood that this is not to be considered as establishing, any precedent relative to purge of contempt.

MR. FULTON: Would the gentleman permit me to ask another question?

MR. JACKSON: Surely.

MR. FULTON: When a person is cited and becomes a defendant in a case before the United States district court, is it within our power, our discretion, or our jurisdiction in the House then to withdraw the citation? Why does not the gentleman who has been cited by the Un-American Activities Committee for contempt, and who refused to answer questions on his subversive activities for the overthrow of the United States Government, go to the proper authorities on the judicial side and say that he has now changed, although he committed the offense, and ask that this later repentance and change of mind be taken in mitigation of what the penalty might be? The point is this: Are we in the House responsible for relieving such a cited individual of all penalty, or should he go to the Attorney General, to whom this citation has been referred, and the judiciary, to get the penalty mitigated, now that he has changed his mind?

MR. [FRANCIS E.] WALTER [of Pennsylvania]: Mr. Speaker, will the gentleman yield?

MR. JACKSON: I yield to the gentleman from Pennsylvania.

MR. WALTER: I think it is important to understand that in this particular case we are just where we were after the vote to cite this man was taken. No further steps have been taken. The matter has not been presented to the grand jury. There has been no indictment, so that we are still in control of this entire situation.

MR. FULTON: Then will the committee at this juncture limit this type of case to the jurisdiction where it has still the actual control of the citation as in this situation? Once the citation

is handed over into the hands of a United States attorney, I believe it should be the United States attorney that goes before the court and asks for the mitigation or the dismissal.

MR. WALTER: I am quite certain that the United States attorney does not know anything about this case. It has been referred to the Department of Justice, but I do not believe the matter has gone to the United States attorney. Further, this is an unusual case in this, that this man realized after he searched his soul and conscience that he had done something injurious to his country, and he convinced us that he was willing and anxious to cooperate with the work the Congress of the United States has imposed upon this committee. It is entirely a bona fide, genuine action on the part of this man. I do not believe in the light of these circumstances he should be put to the trouble and expense of defending an action even though ultimately the United States attorney would recommend leniency.

MR. JACKSON: May I say to the gentleman it is my understanding that the Attorney General's office and the United States attorney's office are in accord with the action that is here proposed.

MR. VELDE: Mr. Speaker, will the gentleman yield?

MR. JACKSON: I yield to the gentleman from Illinois.

MR. VELDE: Let me point out, too, that this witness was not a vicious and physically contemptuous witness. He felt within his conscience, at least we members of the committee felt that he had it within his conscience, that he should refuse to answer certain questions. I certainly would not indiscriminately recommend that all these witnesses who come forward after being cited be purged by the House of Representatives. I think you can depend upon the members of our Committee on Un-American Activities, who voted unanimously to submit this resolution, to take those cases where it seems it is proper to make the purge or to ask for a purging resolution.

MR. JACKSON: I thank the gentleman. I might say that we are frequently belabored in some quarters for being unduly harsh. I believe the adoption of this resolution will indicate that the committee is trying its best to be fair and just

MR. [KIT] CLARDY [of Michigan]: Mr. Speaker, will the gentleman yield?

MR. JACKSON: I yield to the gentleman from Michigan.

MR. CLARDY: Is it not true that this witness when he came before us was a more or less confused young man who did not raise the fifth amendment, did not raise any of the amendments, but merely had a mistaken belief that by cooperating with the committee he would be violating something that was within his conscience, unlike most of those who come before the committee, and that we thought the spirit of Christian charity ought to prevail in this case because it was perhaps the first and maybe the last and only instance in which we would find a man of that character coming before us?

MR. JACKSON: Yes. I sensed that to be the feeling of the committee in this connection.

MR. CLARDY: After he had appeared the first time he became married, he consulted with his wife, he consulted

with his priest, he consulted with his friends, and finally he came back before us, because he was in his conscience convinced he could do his country a service. I would hate to see the House turn down this one case.

MR. JACKSON: I am inclined to think, if we give the House a chance, it will vote this resolution.

MR. FULTON: If the gentleman will yield, I want to ask the chairman of the Un-American Activities Committee a question. I may be pressing the point, but this is establishing a precedent which will be followed hereafter. I cannot accept the ground that maybe a member of the committee thought this was being done in charity. I would therefore ask the chairman of the Committee on Un-American Activities to state expressly the rule that will be followed by the Un-American Activities Committee in cases where there is a change of mind and the witness decides he will purge himself of this contempt after he has been cited by the House in accordance with the Un-American Activities Committee's own recommendations. I would like that stated right here for a precedent on the first one that comes up, so that there is a precedent and a rule for future cases.

MR. VELDE: The gentleman knows it is impossible for me to say what the committee will do under any of these circumstances. I am sure they will be reasonable. On top of that the House of Representatives is not establishing a precedent in the sense that it is a legal precedent established by the Supreme Court. The House of Representatives can vote on any of these resolutions as they see fit.

Mr. Speaker, I move the previous question.

The previous question was ordered.

THE SPEAKER:[15] The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Certification of Purgation

§ 21.3 The Speaker informed the House when he had, pursuant to authority granted him by resolution, certified purgation of contempt to the U.S. Attorney.

On July 26, 1954,[16] Speaker Joseph W. Martin, Jr., of Massachusetts, informed the House that he had certified to the U.S. Attorney for the District of Columbia the report, House Report No. 2472, purging Francis X. T. Crowley of contempt.

CITATIONS FOR CONTEMPT

THE SPEAKER: The Chair desires to announce that pursuant to sundry resolutions of the House he did, on Friday, July 23, 1954, make certifications to the United States attorney, District of Columbia, the United States attorney, southern district of California, the United States attorney, eastern district of Michigan, the United States attorney for the district of Oregon, and the United States attorney, western district of Washington, as follows:

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15. Joseph W. Martin, Jr. (Mass.).

16. 100 CONG. REC. 12023, 12024, 83d Cong. 2d Sess.

TO THE UNITED STATES ATTORNEY
DISTRICT OF COLUMBIA: . . .

House Resolution 681, concerning the action of Francis X. T. Crowley in purging himself of contempt of the House of Representatives.(17)

U.S. Attorney's Response

§ 21.4 The Speaker laid before the House the U.S. Attorney's affirmative response to a resolution requesting withdrawal of contempt proceedings against a person who had purged himself of contempt by cooperating with a committee.

On Aug. 9, 1954,(18) Speaker Joseph W. Martin, Jr., of Massachusetts, laid before the House a letter from the U.S. Attorney for the District of Columbia.(19)

PROCEEDINGS AGAINST FRANCIS X. T. CROWLEY

The Speaker laid before the House the following communication:

AUGUST 5, 1954.

Hon. JOSEPH W. MARTIN, Jr.,
Speaker of the House of Representatives, Washington, D.C.

In re Francis X. T. Crowley, cited for contempt of the House by House Resolution 541, 83d Congress.

DEAR MR. SPEAKER: On May 12, 1954, pursuant to House Resolution 541, 83d Congress, you certified to me the contempt of the above individual for refusing to answer questions before the Committee on Un-American Activities on June 8, 1953.

On July 23, 1954, that committee by Report No. 2472, reported that Crowley on June 28, 1954, appeared voluntarily before it in public session and answered all questions which he had previously refused to answer and, in addition, voluntarily gave extensive information concerning the operation of the Communist conspiracy in this country. That committee further reported that it was the sense of the committee that Crowley had thereby purged himself of his previous contempt of the House of Representatives.

House Resolution 681 of July 23, 1954, resolved that the Speaker certify to the United States attorney House Report No. 2472, referred to above, "to the end that legal proceedings based upon the matter certified by the Speaker pursuant to House Resolution 541, 83d Congress, 2d session, against the said Francis X. T. Crowley may be withdrawn and dropped in the manner and form provided by law."

In my opinion this action by the committee and by the House has the effect of withdrawing the original citation of Crowley to my office and of relieving me of the statutory duty to put the matter before the grand jury, as provided by title 2, United States Code, section 194.

Inasmuch as Crowley has purged himself, and in view of the wish of the House, expressed in House Reso-

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17. See § 21.2, supra, for the text of H. Res. 681, and § 21.4, infra, for the response of the U.S. Attorney.

18. 100 CONG. REC. 13734, 83d Cong. 2d Sess.

19. See §§ 21.1 and 21.2, supra, for the texts, respectively, of H. REPT. NO. 2472, purging Mr. Crowley of contempt, and H. Res. 681, authorizing the Speaker to certify the report. See also 100 CONG. REC. 6400, 6401, for the texts of H. REPT. NO. 1586, relating to the original refusal to testify, and H. Res. 541, authorizing the Speaker to certify that report to the U.S. Attorney.

lution 681, that contempt proceedings against Crowley be dropped, I shall not present the matter to the grand jury and I shall close the prosecution on my records.

Sincerely,

LEO A. ROVER,
United States Attorney.

(Copy to Hon. Harold H. Velde, chairman Committee on Un-American Activities, House of Representatives, Washington, D.C.)

§ 21.5 The U.S. Attorney, in response to a letter received during an adjournment informing him that a witness who had been cited by the House for contempt had later purged himself, advised the Speaker by letter that he would not present the contempt to the grand jury and would close the prosecution on his records.

On Mar. 10, 1955,[20] the following item appeared in the *Congressional Record*.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

527. A letter from the United States Attorney, District of Columbia, Department of Justice, relative to a letter addressed to Hon. Francis Walter, chairman, committee on Un-American Activities of the House of Representatives, relating to the case of Wilbur Lee Mahaney, Jr., cited for contempt of the House of Representatives by House Resolution 535, 83d Congress; to the Committee on Un-American Activities.[1]

Parliamentarian's Note: In a letter dated Mar. 3, 1955, the U.S. Attorney for the District of Columbia, Leo A. Rover, informed the Chairman of the Committee on Un-American Activities of the 84th Congress, Francis E. Walter, of Pennsylvania, that he would drop legal action against Wilbur Lee Mahaney, Jr., because the former chairman, Harold H. Velde, of Illinois, had by letter indicated that it was the sense of the committee that the witness had purged himself. The body of

20. 101 CONG. REC. 2659, 84th Cong. 1st Sess.

1. See 100 CONG. REC. 6386–89, 83d Cong. 2d Sess., May 11, 1954, for the texts of H. REPT. NO. 1580, citing Mr. Mahaney for contempt for refusal to testify, and H. Res. No. 535, authorizing the Speaker to certify to the U.S. Attorney the report, respectively.

Parliamentarian's Note: This letter was not laid before the House; an adjournment prevented action on a resolution certifying the purgation.

See §§ 21.1, 21.2, and 21.4, supra, for the texts of a report purging a witness, a resolution authorizing the Speaker to certify the purging report to the U.S. Attorney, and the response of the U.S. Attorney in the case of Francis X. T. Crowley, respectively, when the House was able to receive and act on the committee report because it was in session.

the U.S. Attorney's letter to Chairman Walter follows:

> By letter dated December 30, 1954, the Honorable Harold H. Velde, Chairman, Committee on Un-American Activities of the House of Representatives, informed me that on November 28, 1954, the Committee voted that it was the sense of the Committee that Mahaney, on July 30, 1954, had purged himself of the contempt theretofore committed by him in refusing to answer questions on February 16, 1954, for which refusals Mahaney had been cited for contempt by the House of Representatives on May 11, 1954.
>
> In the letter of December 30, 1954, Chairman Velde stated that the report and statement of Mahaney's purge were being forwarded to this office to the end that legal proceedings on the contempt citation against Mahaney may be withdrawn and dropped.
>
> Mr. Velde further stated that the report and statement were being forwarded directly by the Chairman of the Committee inasmuch as the House of Representatives was adjourned. It is my understanding that the Speaker of the House was out of the city and unavailable to receive and transmit the report and statement to this office as is provided by 2 U.S.C. 194 for citations of contempt when Congress is not in session.
>
> It appears, under these circumstances, that this action by the Committee may be regarded as having the effect of withdrawing the original citation of Mahaney to my office and of relieving me of the statutory duty to put the matter before the grand jury, as provided by 2 U.S.C. 194.
>
> Inasmuch as Mahaney has been considered by the Committee as having purged himself, and in view of the wish of the Committee expressed by Committee in the aforementioned letter of its Chairman, that contempt proceedings against Mahaney be dropped, I shall not present the matter to the grand jury and I shall close the prosecution on my records.
>
> For your information, I do not propose to give notification of this action to Mahaney.

§ 22. Certification to U.S. Attorney

A statute[2] imposes a duty on the Speaker of the House or President of the Senate to certify to the appropriate U.S. Attorney statements of facts relating to contumacious conduct of witnesses. The statute requires a committee to report such facts to the House or Senate when Congress is in session, or to the Speaker or President of the Senate when Congress is not in session.

When either the House or Senate receives a report of contumacious conduct from a committee, it routinely considers a resolution offered by a committee member authorizing the Speaker or President of the Senate to certify the facts to the U.S. Attorney. By reviewing this resolution, the body checks the action of the committee.

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2. 2 USC § 94. See 3 Hinds' Precedents §§ 1672, and 1691 for earlier precedents relating to certification.

Although the necessity of a certification as a prerequisite to prosecution has long been assumed,[3] some conflict has arisen among different jurisdictions with respect to such requirement. One district court held that an indictment which failed to set forth compliance with the procedure outlined in 2 USC § 194 was not fatally defective and should not be dismissed;[4] another, in a habeas corpus proceeding, held that a person charged with a violation of the contempt statute, 2 USC § 192, for refusal to testify before a committee could not legally be held under a warrant issued by a U.S. Commissioner which was based on an affidavit of the secretary of the Committee on Un-American Activities and not on a certification from the Speaker.[5]

The portion of the statute which authorizes the Speaker or President of the Senate, without action of the House or Senate, to certify statements of facts he receives while Congress is not in session—a procedure designed to avoid delay in prosecuting contumacious witnesses—was interpreted in one case to be not automatic but discretionary.[6] Thus, it was held that, in order to furnish the protection afforded by legislative review of contempt citations, the Speaker or President of the Senate must act in place of the full House or Senate in such circumstances, by examining the merits of the citation. The Speaker, stated the three-judge court, in a two to one opinion, erred in interpreting the statute to prohibit him from exercising his independent judgment notwithstanding any reservations he had about the validity of the committee's contempt citation. Accordingly, the court reversed the contempt convictions in the case.[7]

Failure to make a report or issue a certificate has been held to be a matter to be raised by way of defense.[8]

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3. *In re Chapman,* 166 U.S. 661, 667 [1897] (see 2 Hinds' Precedents §§ 1612–1614 for a discussion of this ease); *United States* v *Costello,* 198 F2d 200, 204 (2d Cir. 1952), cert. denied, 344 U.S. 374 (1952); and *Wilson* v *United States,* 369 F2d 198 (D.C. Cir. 1966).

4. *Ex Parte Frankfeld,* 32 F Supp 915 (D.D.C. 1940).

5. *United States* v *Josephson,* 74 F Supp 958 (S.D. N.Y. 1947), aff'd., 165 F2d 82 (2d Cir. 1947); cert. denied, 333 U.S. 838 (1948).

6. *Wilson, et al.* v *United States,* 369 F2d 198 (D.C. Cir. 1966). See § 22.8, infra, for further discussion.

7. This ruling would not affect the principle (§ 22.2, infra) that no action of the House is necessary when the Speaker certifies a statement of facts to the U.S. Attorney, inasmuch as the ruling deals only with the duty of the Speaker.

8. *In re Chapman,* 166 U.S. 661, 667 (1897), discussed at 2 Hinds' Prece-

During Congressional Session

§ 22.1 A contempt citation reported while Congress is in session is certified to the appropriate U.S. Attorney by the Speaker by authority of a privileged resolution.

On Sept. 3, 1959,[9] the House by voice vote approved a resolution authorizing the Speaker to certify to U.S. Attorney a report citing a witness in contempt.[10]

MR. [FRANCIS E.] WALTER [of Pennsylvania]: Mr. Speaker, I offer a privileged resolution (H. Res. 375) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of Representatives as to the refusal of Edwin A. Alexander to answer questions before a duly constituted subcommittee of the Committee on Un-American Activities, together with all of the facts in connection therewith, under seal of the House of Representatives, to the United States Attorney for the Northern District of Illinois, to the end that the said Edwin A. Alexander may be proceeded against in the manner and form provided by law. . . .

MR. WALTER: Mr. Speaker, I move the previous question.

The previous question was ordered.

THE SPEAKER:[11] The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

During Adjournment

§ 22.2 The statute, 2 USC § 194, provides that when Congress is not in session, the Speaker shall certify to a U.S. Attorney reports and statements of facts submitted by investigating committees describing refusals of individuals to testify or produce subpenaed materials; consequently, no action by the House is necessary.

On Nov. 14, 1944,[12] Speaker Sam Rayburn, of Texas, explained

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dents § 1614; *United States* v *Dennis*, 72 F Supp 417, 422 (D.D.C. 1947), aff'd. 171 F2d 986 (D.C. Cir. 1948), aff'd. 339 U.S. 162 (1950), and *United States* v *Shelton*, 211 F Supp 869 (D.D.C. 1962).

9. 105 CONG. REC. 17945, 86th Cong. 1st Sess.; see also, for example, §§ 20.2, 20.4, 20.6, 20.8, and 20.10, supra, for other resolutions authorizing the Speaker to certify reports to the U.S. Attorney.

10. See 22.2, infra, which states that no action of the House is necessary to authorize the Speaker to certify a statement of facts relating to a witness' contumacy received when Congress is not in session. In such a case authority for certification is 2 USC 194, rather than a resolution.

11. Sam Rayburn (Tex.).

12. 90 CONG. REC. 8163, 78th Cong. 2d Sess. See *United States* v *Rumely*,

the procedure for certifying reports to the U.S. Attorney under 2 USC § 194.(13)

EDWARD A. RUMELY AND JOSEPH P. KAMP

THE SPEAKER: The Chair desires to announce that during the past recess of the Congress the Special Committee to Investigate Campaign Expenditures authorized by House Resolution 551, Seventy-eighth Congress, reported to and filed with the Speaker statements of facts concerning the willful and deliberate refusal of Edward A. Rumely of the Committee for Constitutional Government and Joseph P. Kamp of the Constitutional Educational League, Inc., to testify and to produce the books, papers, records, and documents of their respective organizations before the said Special Committee of the House, and the Speaker, pursuant to the mandatory provisions of [2 USC § 194] certified to the United States attorney, District of Columbia, the statement of facts concerning the said Edward A. Rumely on September 26, 1944, and the statement of facts concerning the said Joseph P. Kamp on November 2, 1944.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. RANKIN: Mr. Speaker, what is necessary to dispose of the document which the Speaker has just read? Will it require a resolution by the House or will it be referred to some committee?

THE SPEAKER: That is not necessary under the statute. It is before the court now.

MR. RANKIN: I understand, but in order to call for court action it will be necessary, as I understand it, to have a resolution from the House.

THE SPEAKER: The Chair thinks not, under the law.

Announcement of Certification

§ 22.3 The Speaker informs the House when he has, pursuant to authority granted him by resolution, certified contempt cases to U.S. Attorneys.

On Feb. 7, 1936,(14) Speaker John W. McCormack, of Massa-

197 F2d 166 (D.D.C. 1952), cert. granted, 344 U.S. 812, aff'd., 345 U.S. 41 (1953), in which defendant's conviction for contempt of Congress was reversed on grounds that his first amendment rights superseded the congressional investigative power in this instance. See also *United States* v *Kamp,* 102 F Supp 757 (D.D.C. 1952) [defendant found not guilty, as government failed to prove default beyond a reasonable doubt].

13. See § 22.1, supra, for the procedure for authorizing a certification of a report received when Congress is in session.

14. 112 CONG. REC. 2290, 89th Cong. 2d Sess. See also, for example, 105 CONG. REC. 18175, 86th Cong. 1st Sess., Sept. 4, 1959, for an announcement by Speaker Sam Rayburn (Text), that he had, pursuant to H. Res. 374 and 375, certified to the

chusetts, announced that he had certified to the U.S. Attorney for the District of Columbia contempt cases against alleged members of the Ku Klux Klan who had refused to testify.(15)

CERTIFICATIONS TO THE U.S. ATTORNEY FOR THE DISTRICT OF COLUMBIA—ANNOUNCEMENT

THE SPEAKER: The Chair desires to announce that, pursuant to sundry resolutions of the House agreed to on February 2, 1966, he did on February 3, 1966 make certifications to the U.S. attorney, District of Columbia, as follows:

House Resolution 699: The refusal of Robert M. Shelton to produce certain pertinent papers before the Committee on Un-American Activities.

House Resolution 700: The refusal of Calvin Fred Craig to produce certain pertinent papers before the Committee on Un-American Activities.

House Resolution 701: The refusal of James R. Jones to produce certain pertinent papers before the Committee on Un-American Activities.

House Resolution 702: The refusal of Marshall R. Kornegay to produce certain pertinent papers before the Committee on Un-American Activities.

House Resolution 703: The refusal of Robert E. Scoggin to produce certain pertinent papers before the Committee on Un-American Activities.

House Resolution 704: The refusal of Robert Hudgins to produce certain pertinent papers before the Committee on Un-American Activities.

House Resolution 705: The refusal of George Franklin Dorsett to produce certain pertinent papers before the Committee on Un-American Activities.

U.S. Attorney for the District of Columbia and the Northern District of Illinois reports regarding refusals of Martin Popper and Edwin W. Alexander, respectively, to testify before the Committee on Un-American Activities; 98 CONG. REC. 886, 82d Cong. 2d Sess., Feb. 6, 1952, for an announcement by Speaker Rayburn that he had, pursuant to H. Res. 517, certified to the U.S. Attorney for the District of Columbia a report regarding the refusal of Sidney Buchman to appear before the Committee on Un-American Activities; and 92 CONG. REC. 10782, 79th Cong. 2d Sess., Aug. 2, 1946, for an announcement by Speaker Rayburn that he had, pursuant to H. Res. 752 and 749, certified to the U.S. Attorney for the District of Columbia reports regarding refusals of Richard Morford and George Marshall to produce materials to the Committee on Un-American Activities.

15. When the House is in session the Speaker certifies reports of contumacy of witnesses pursuant to authority of the House granted by approval of a simple resolution. When the House is not in session, however, the Speaker certifies a statement of facts of the contumacy pursuant to authority granted by 2 USC § 194. See § 22.2, supra, in which the Speaker indicated that no action of the House was necessary to authorize him to certify a statement of facts as to a witness' refusal to testify or produce materials received while the Congress was not in session.

§ 22.4 At the next meeting of the House the Speaker announces that he has, during an adjournment to a day certain and pursuant to statute, certified to the U.S. Attorney of the District of Columbia statements of facts regarding the refusal of individuals to testify and produce subpenaed materials before a special committee authorized to make investigations.

On Nov. 14, 1944,[16] the first day after an adjournment to a day certain, Speaker Sam Rayburn, of Texas, announced certification of reports and statements of facts to the U.S. Attorney for the District of Columbia.

EDWARD A. RUMELY AND JOSEPH P. KAMP

THE SPEAKER: The Chair desires to announce that during the past recess of the Congress the Special Committee to Investigate Campaign Expenditures authorized by House Resolution 551, Seventy-eighth Congress, reported to and filed with the Speaker statements of facts concerning the willful and deliberate refusal of Edward A. Rumely of the Committee for Constitutional Government and Joseph P. Kamp of the Constitutional Educational League, Inc., to testify and to produce the books, papers, records, and documents of their respective organizations before the said Special Committee of the House, and the Speaker, pursuant to the mandatory provisions of Public Resolution No. 123, Seventy-fifth Congress, certified to the United States attorney, District of Columbia, the statement of facts concerning the said Edward A. Rumely on September 26, 1944, and the statement of facts concerning the said Joseph P. Kamp on November 2, 1944.

Parliamentarian's Note: Public Law No. 123, to which the Speaker referred, has been codified as 2 USC § 194.[17]

§ 22.5 On one occasion, where the Speaker, during a sine die adjournment and pursuant to statute, had certified to a U.S. Attorney a contempt case arising from a committee and reported to him, he notified the House at its next meeting through its new Speaker, who laid the communication before the House.

On Jan. 5, 1955,[18] Speaker Sam Rayburn, of Texas, laid be-

16. 90 CONG. REC. 8163, 78th Cong. 2d Sess.

17. See § 22.2 supra, which states that no action of the House is necessary in this situation.

18. 101 CONG. REC. 11, 84th Cong. 1st Sess. See also *United States* v *Russell*, 280 F2d 688 (D.C. Cir. 1960), rev'd, 369 U.S. 749 (1962) [defendant's conviction reversed, the court stating that a grand jury indictment must state the question which was under inquiry at time of defendant's default or refusal to answer].

fore the House a communication from the Speaker of the 83d Congress.[19]

MATTER OF LEE LORCH, ROBERT M. METCALF, AND NORTON ANTHONY RUSSELL

The Speaker laid before the House the following communication.

The Clerk read the communication, as follows:

JANUARY 5, 1955.

The SPEAKER,
House of Representatives,
United States, Washington, D.C.

DEAR MR. SPEAKER: I desire to inform the House of Representatives that subsequent to the sine die adjournment of the 83d Congress the Committee on Un-American Activities reported to and filed with me as Speaker a statement of facts concerning the refusal of Lee Lorch, Robert M. Metcalf, and Norton Anthony Russell to answer questions before the said committee of the House, and I, pursuant to the mandatory provisions of Public Resolution 123, 75th Congress, certified to the United States attorney, southern district of Ohio, the statement of facts concerning the said Lee Lorch and Robert M. Metcalf on December 7, 1954, and certified to the United States attorney, District of Columbia, the statement of facts concerning the said Norton Anthony Russell on December 7, 1954.

Respectfully,
JOSEPH W. MARTIN, Jr.[20]

§ 22.6 At the opening meeting of the new Congress, the Speaker announces to the House that he has during the adjournment sine die, as Speaker of the prior Congress, certified to the U.S. Attorney statements of facts regarding the refusal of individuals to testify, before investigating committees.

On Jan. 7, 1959,[1] the opening day of the 86th Congress, Speaker Sam Rayburn, of Texas, notified the House that he had certified statements of facts to U.S. Attorneys.[2]

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19. See also 93 CONG. REC. 39, 40, 80th Cong. 1st Sess., Jan. 3, 1947, in which the Speaker of the 80th Congress, Joseph W. Martin, Jr. (Mass.), laid before the House a letter from the Speaker of the 79th Congress, Sam Rayburn (Tex.), relating to his certification subsequent to the *sine die* adjournment of the 79th Congress and pursuant to 2 USC 194, to the U.S. Attorney for the District of Columbia of a statement of facts relating to the refusal of Benjamin J. Fields to produce materials before the Select Committee to Investigate the Disposition of Surplus Property. See also *Fields* v *United States,* 164 F2d 97 (D.C. Cir. 1947), cert. denied, 332 U.S. 851 [defendant's conviction affirmed].

20. Mr. Martin was the Minority Leader of the 84th Congress.

1. 105 CONG. REC. 17, 86th Cong. 1st Sess. See *Wheedlin* v *United States* 283 F2d 535 (9th Cir. 1960), in which the defendant's subsequent conviction for contempt of Congress was affirmed.

2. See also 111 CONG. REC. 25, 89th Cong. 1st Sess., Jan. 4, 1965, for an

COMMITTEE ON UN-AMERICAN ACTIVITIES

THE SPEAKER: The Chair desires to announce that subsequent to the sine die adjournment of the 85th Congress, the Committee on Un-American Activities reported to and filed with the Speaker statements of fact concerning the refusal of Donald Wheedlin and Harvey O'Connor to appear in response to subpenas and to testify before duly constituted subcommittees of the Committee on Un-American Activities of the House of Representatives, and that he did, on January 1, 1959, pursuant to the mandatory provisions of Public Resolution 123, 75th Congress, certify to the U.S. attorney, southern district of California, the statement of facts concerning the said Donald Wheedlin, and to the U.S. attorney, district of New Jersey, the statement of facts concerning the said Harvey O'Connor.

§ 22.7 The Speaker informed the House when he had, pursuant to authority granted him by resolution, certified purgation of contempt to the U.S. Attorney.

On July 26, 1954,[3] Speaker Joseph W. Martin, Jr., of Massachusetts, informed the House that he had certified to the U.S. Attorney for the District of Columbia the report purging Francis X. T. Crowley of contempt.

CITATIONS FOR CONTEMPT

THE SPEAKER: The Chair desires to announce that pursuant to sundry resolutions of the House he did, on Friday, July 23, 1954, make certifications to the United States attorney, District of Columbia, the United States attorney, southern district of California, the United States attorney, eastern district of Michigan, the United States attorney for the district of Oregon, and the United States attorney, western district of Washington, as follows:

TO THE UNITED STATES ATTORNEY, DISTRICT OF COLUMBIA

* * * * *

House Resolution 681, concerning the action of Francis X. T. Crowley in purging himself of contempt of the House of Representatives.

Certification of Contempt as Discretionary

§ 22.8 A divided three-judge federal court has held that the statute (2 USC § 194) au-

announcement by Speaker John W. McCormack (Mass.), that he had, on Dec. 11, 1964, during an adjournment *sine die* of the 88th Congress and pursuant to 2 USC § 194, certified to the U.S. Attorney for the District of Columbia statements of facts regarding refusals of Russell Nixon, Dagmar Wilson, and Donna Allen to testify before the Committee on Un-American Activities. The named defendant's convictions were reversed in *Wilson* v *United States,* 369 F2d 198 (D.C. Cir. 1966). See § 22.8, infra, for discussion of the Wilson case.

3. 100 CONG. REC. 12023, 12024, 83d Cong. 2d Sess.

thorizing the Speaker to certify to a U.S. Attorney any contempt reported by a House committee between legislative sessions is not mandatory, but requires the Speaker to renew the contempt charge and exercise his discretion with respect thereto.

In *Wilson* v *United States,*[4] the court reviewed convictions of Russell Nixon, Dagmar Wilson, and Donna Allen for contempt of Congress based on refusals to answer questions at an executive session conducted by a subcommittee of the House Committee on Un-American Activities. The court reversed the convictions, holding that the alleged contempts had been improperly certified to the U.S. Attorney under the following statute:[5]

> Whenever a witness summoned as mentioned in section 192 . . . fails . . . or . . . refuses to answer any question pertinent to the subject under inquiry before either House . . . or any committee or subcommittee of either House of Congress [and] when Congress is not in session, a statement of fact constituting such failure is reported to . . . the Speaker of the House, it shall be the duty of the . . . Speaker . . . to certify, and he shall so certify, the statement of facts . . . to the appropriate United States attorney, whose duty it shall be to bring the matter before the grand jury for its action.

In the view of the court, the Speaker had erred in construing the statute to be mandatory and therefore to prohibit any inquiry by him; accordingly, his "automatic certification" was held to be invalid. In reaching this conclusion, the court stressed the legislative history of the provision and the established practice of the House, both of which, in the court's view, indicated a congressional intention that reports of contempt of Congress be reviewed on their merits by the House involved if in session, or by the Speaker when Congress is not in session.

A dissenting opinion, relying in part on the principle that statutory language is to be interpreted wherever possible in its ordinary, everyday sense, stressed the unambiguous language of the statute itself. The dissent further emphasized the importance of committee reports in studying the legislative history of provisions, and indicated that the reports on the provisions regarding the Speaker's duty to certify contempt charges between sessions revealed an intent to facilitate prompt action in cases of contempt reported at such times. The practice of Congress when in session was not, in the dissenting view, considered to be

4. 369 F2d 198 (D.C. Cir. 1966).

5. 2 USC § 194.

instructive in determining the duty of the Speaker between sessions.